

No. 14748

United States
Court of Appeals
For the Ninth Circuit.

CARL HARVEY JACKINS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington
Northern Division.

FILED

JUL 20 1955

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

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Attorney for Appellant,

1304 Northern Life Tower,

Seattle 1, Washington.

CHARLES P. MORIARTY,

U. S. Attorney ;

RICHARD D. HARRIS,

Asst. U. S. Attorney, Attorneys for Appellee.

1012 U. S. Court House,

Seattle 4, Washington.

United States District Court, Western District of
Washington, Northern Division

No. 49,064

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL HARVEY JACKINS,

Defendant.

INDICTMENT

The Grand Jury charges:

Introduction

That on or about June 14, 1954, at Seattle, in the Northern Division of the Western District of Washington, a duly authorized subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings, pursuant to Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828), and to H. Res. 5, 83d Congress.

That the defendant Carl Harvey Jackins appeared as a witness before that subcommittee, at the place and on the date above stated, and was asked questions which were pertinent to the question then under inquiry. At the place and time stated, the defendant Carl Harvey Jackins refused to answer those pertinent questions. The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition merely describe the question which was asked of the defendant Carl

Harvey Jackins and which he, the said Carl Harvey Jackins, refused to answer.

Count I.

Will you tell the committee please, briefly, what your employment record has been since 1935.

All in violation of Title 2, U.S.C., Sec. 192.

Count II.

How were you employed in 1948.

All in violation of Title 2, U.S.C., Sec. 192.

Count III.

Did you hold an official position in 1948 or at any time prior thereto, in Local 46 of the International Brotherhood of Electrical Workers.

All in violation of Title 2, U.S.C., Sec. 192.

Count IV.

Were you expelled from Local 46 of the International Brotherhood of Electrical Workers in 1948.

All in violation of Title 2, U.S.C., Sec. 192.

Count V.

Were you also expelled as business agent of the Building Service Employees' Union sometime prior to 1948.

All in violation of Title 2, U.S.C., Sec. 192.

Count VI.

Were you at any time expelled from Lodge 751 of the Aero Mechanics Union.

All in violation of Title 2, U.S.C., Section 192.

Count VII.

Is this (work of personal counseling) something originated by the Communist Party as part of its program.

All in violation of Title 2, U.S.C., Section 192.

Count VIII.

Who are the other people, then, when you used the word "we," that are associated with you in this movement.

All in violation of Title 2, U.S.C., Section 192.

Count IX.

But what is the name of the group.

All in violation of Title 2, U.S.C., Section 192.

Count X.

Does the group that you referred to have an office with you in the same office that you work in.

All in violation of Title 2, U.S.C., Sec. 192.

A True Bill.

/s/ WALLACE L. COUSENS,
Foreman.

/s/ CHARLES P. MORIARTY,
United States Attorney.

/s/ RICHARD D. HARRIS,
Asst. United States Attorney.

C.R. 108.

Comm.

Bail: \$1000.00.

[Endorsed]: Filed September 15, 1954.

[Title of District Court and Cause.]

MOTION TO DISMISS INDICTMENT

The defendant moves that the indictment be dismissed on the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States of America.

2. Certain questions propounded by the subcommittee of the Committee on Un-American Activities of the House of Representatives, upon which are based counts of the indictment, were beyond the scope and jurisdiction of the investigation then being conducted by the subcommittee.

/s/ ARTHUR G. BARNETT,

/s/ VERNON W. TOWNE,

Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed October 4, 1954.

[Title of District Court and Cause.]

ORDER DENYING MOTION TO DISMISS
INDICTMENT

This Cause coming on regularly for hearing upon the motion of the defendant to dismiss the indictment in the above-entitled cause, and after argument of counsel, it is by the Court, this 4th day of October, 1954,

Ordered that the motion to dismiss the indictment is hereby denied, without prejudice to the renewal thereof at any time, or during the course of the trial of the general issue.

Done in open court this 4th day of October, 1954.

/s/ WILLIAM J. LINDBERG,
District Judge.

Presented by:

/s/ VERNON W. TOWNE,
Attorney for Defendant.

Approved:

/s/ RICHARD D. HARRIS,
Asst. U. S. Atty.

[Endorsed]: Filed October 4, 1954.

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL
BY DEFENDANT

Comes now the defendant Carl Harvey Jackins

and does hereby elect in writing to waive trial by jury in the above cause.

Dated this 7th day of March, 1955, at Seattle, Washington.

/s/ CARL HARVEY JACKINS.

/s/ ARTHUR G. BARNETT,

Attorney for Carl Harvey
Jackins.

Receipt of copy acknowledged.

[Endorsed]: Filed March 7, 1955.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.
2. The judgment is contrary to the weight of the evidence.
3. The judgment is not supported by substantial evidence.
4. A new trial is in the interests of justice.

Dated the 24th day of March, 1955.

/s/ ARTHUR G. BARNETT,

Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed March 25, 1955.

[Title of District Court and Cause.]

GENERAL FINDING

I find the defendant, Carl Harvey Jackins, guilty as charged in Counts I, II, VIII, IX and X of the Indictment in the above-entitled cause.

Done in Open Court this 25th day of March, 1955.

/s/ GEO. H. BOLDT,

United States District Judge.

[Endorsed]: Filed March 25, 1955.

United States District Court, Western District
of Washington, Northern Division

No. 49064

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL HARVEY JACKINS,

Defendant.

JUDGMENT, SENTENCE AND ORDER
OF PROBATION

On this 25th day of March, 1955, the attorney for the Government, and the defendant, Carl Harvey Jackins, appearing in person and being represented by Arthur G. Barnett, his attorney, the Court finds the following:

That prior to the entry of his plea, a copy of

the Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Counts I, II, VIII, IX and X; that the Probation Officer of this district has made a presentence investigation and report to the Court; now, therefore,

It Is Adjudged that the defendant, Carl Harvey Jackins, having waived a jury, has been tried and convicted by the Court and was found guilty of the offense of violation of Title 2, Section 192, as charged in Counts I, II, VIII, IX and X of the Indictment, and the Court having entered its General Finding and having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that as to Counts I, II, VIII, IX and X the defendant is guilty as charged in Counts I, II, VIII, IX and X of the Indictment and is convicted.

It Is Adjudged and Ordered that the defendant, on Count I of the Indictment, be committed to the custody of the Attorney General of the United States for imprisonment in such institution as the Attorney General of the United States or his authorized representative may by law designate for the period of Six (6) Months, and further, that the defendant shall pay a fine to the United States of America in the sum of Two Hundred Fifty (\$250.00) Dollars, for which fine let civil execution issue.

It Is Further Adjudged and Ordered that the defendant on each of Counts II, VIII, IX and X of the Indictment, be committed to the custody of the Attorney General of the United States for imprisonment in such institution as the Attorney General of the United States or his authorized representative may by law designate for the period of Six (6) Months, the execution of the sentences on each of Counts II, VIII, IX and X to be concurrent with, and not consecutive to, the execution of the sentence on Count I, and further, that the defendant shall pay a fine to the United States of America in the sum of Two Hundred Fifty (\$250.00) Dollars on each of Counts II, VIII, IX and X, said fines to be concurrent with, and not cumulative with each other or the fine imposed on Count I, making a total fine as to all counts of Two Hundred Fifty (\$250.00) Dollars, and the payment of Two Hundred Fifty (\$250.00) Dollars by the defendant shall constitute payment of all fines as to all counts imposed herein.

It Is Further Adjudged and Ordered that the execution of the imprisonment sentences herein be and hereby is Suspended and the defendant is placed on probation for a period of Two (2) Years, commencing this date, upon the following conditions:

The defendant shall be placed upon probation as provided by the statutes of the United States relative to probation during his good behavior and until further order of the Court, and upon the express condition that said defendant does not during said

probationary period violate any law of the United States or of any State or community where he may be, and shall report regularly to the United States Probation Officer at the times and in the manner said Officer shall direct.

Done in Open Court this 25th day of March, 1955.

/s/ GEO. H. BOLDT,

United States District Judge.

Presented by:

/s/ RICHARD D. HARRIS,

Asst. United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed March 25, 1955.

[Title of District Court and Cause.]

STATEMENT OF DOCKET ENTRIES

1. Indictment or information for Refusal to testify before Congressional Sub-committee, T2 Sec. 192, filed September 15, 1954.
2. Arraignment, September 23, 1954.
3. Plea to indictment: Not Guilty, September 23, 1954.
4. Motion to withdraw plea of guilty denied: , 19...
5. Trial by jury, or by court if jury waived: Trial by Court—March 14, 15, 16, 1955.
6. Verdict or finding of guilt: Court finds defendant guilty as charged in Counts I, II, VIII, IX and X, March 16, 1955.

7. Judgment—(with terms of sentence) or order: Six months and pay fine of \$250.00 as to each count, concurrent, execution of imprisonment suspended and deft. placed on probation two years, total fine on all counts \$250.00. Entered March 25, 1955.

8. Notice of appeal filed March 25, 1955.

Dated: March 29, 1955.

Attest:

MILLARD P. THOMAS,
Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

The appellant is Carl Harvey Jackins. Address: 6753 Twenty-third N.W., Seattle, Washington.

Appellant's attorney: Arthur G. Barnett, 1304 Northern Life Tower, Seattle 1, Washington.

Offense: Violation of Title 2, U.S.C., Sec. 192.

The judgment and sentence given March 25, 1955, by the Honorable George H. Boldt is:

The above-named appellant hereby appeals to the United States Court of Appeals of the Ninth Circuit from the above-stated judgment.

/s/ CARL HARVEY JACKINS,
Defendant.

/s/ ARTHUR G. BARNETT,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed March 25, 1955.

[Title of District Court and Cause.]

BAIL BOND ON APPEAL

Know All Men By These Presents:

That I, Carl Harvey Jackins, am held firmly bound unto the United States Government in the penal sum of One Thousand Dollars (\$1,000.00) for the payment of which sum well and truly to be made I bind and obligate myself, my heirs, executors and administrators, by the deposit herewith of the sum of one thousand dollars cash.

Signed and Sealed this 25th day of March, 1955.

The condition of the foregoing obligation is such that whereas the above-named principal was convicted under Title 2, U.S.C., Sec. 192, on the 25th day of March, 1955, and thereafter filed a motion for a new trial which came on for hearing thereafter and was by the Court overruled and thereafter was sentenced on Friday, March 25, 1955, to serve six months, suspended, and pay a fine of Two Hundred Fifty (\$250.00) Dollars.

That the said Carl Harvey Jackins shall well and truly make his personal appearance before the United States Appellate Court for the Ninth District until discharged by due course of the law, then and there as required by said Court, this obligation shall become void, otherwise to remain in full force, virtue and effect, and further that the defendant shall not leave the jurisdiction of the above-entitled Court.

/s/ CARL HARVEY JACKINS.

The foregoing bond approved, and the Clerk of the above-entitled Court is hereby authorized and directed to accept the One Thousand Dollars cash Bail Bond now on deposit from the defendant in lieu of returning the same to the defendant, as the One Thousand Dollars cash deposit by the defendant as appeal bond, this 25th day of March, 1955.

/s/ GEO. H. BOLDT,
Judge.

Approved as to form:

/s/ RICHARD D. HARRIS,
Asst. U. S. District Attorney.

Bond approved:

/s/ RICHARD D. HARRIS,
Asst. U. S. Attorney.

[Endorsed]: Filed March 25, 1955.

[Title of District Court and Cause.]

ORDER AUTHORIZING TRANSMITTAL
OF EXHIBITS

The defendant having moved for an order directing and authorizing the Clerk to transmit the Exhibits filed in the above-entitled cause to the Clerk of the Ninth Circuit Court of Appeals, and it appearing to the Court and from the records and the files herein that the defendant has appealed to said court, and the Court being fully advised in the premises and from the records and files herein, Now, Therefore,

It Is Hereby Ordered that the Clerk of this Court be and he hereby is authorized and directed to transmit all of the Exhibits in the above-entitled cause to the Clerk of the Ninth Circuit Court of Appeals, San Francisco, California, in connection with the appeal of the defendant.

Done in Open Court this 22nd day of April, 1955.

/s/ GEO. H. BOLDT,
Judge.

Presented by:

/s/RICHARD D. HARRIS,
Asst. U. S. Attorney.

/s/ ARTHUR G. BARNETT,
Attorney for Defendant.

[Endorsed]: Filed April 22, 1955.

In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 49064

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL HARVEY JACKINS,

Defendant.

PROCEEDINGS

Transcript of Trial Proceedings in the above-entitled and numbered cause had before the Honor-

able George H. Boldt, United States District Judge, in the United States Courthouse at Seattle, Washington, on the 14th day of March, 1955.

Appearances:

RICHARD D. HARRIS, ESQ.,
Assistant United States District Attorney,
Appeared on Behalf of the Plaintiff.

ARTHUR G. BARNETT, ESQ.,
Appeared on Behalf of the Defendant.

(Whereupon, the following proceedings were had, to wit:)

The Court: No. 49064, United States vs. Carl Harvey Jackins for trial. Is the case ready?

Mr. Harris: Yes, your Honor.

Mr. Barnett: I have been using as a stenographer for the past two weeks Miss Jackins, secretary, sister of the defendant, and if there is no objection to it, I'd like to have her sit with me to take notes to facilitate anything I want her to take down. I have her here.

The Court: Ordinarily I don't permit any lay persons to be at the counsel table, but—and wouldn't permit it in the trial of a jury case—but it being a non-jury case under those circumstances it will be, permission will be granted.

Mr. Barnett: Thank you very much, your Honor.

The Court: The waiver of the defendant of jury trial so filed and signed by the defendant and by his counsel, and I take it Mr. Barnett, that it is your

client's desire to waive jury trial and proceed with non-jury trial?

Mr. Barnett: That is right, your Honor.

The Court: You have explained fully to him that in such case the Court will hear and determine questions of fact as well as of law?

Mr. Barnett: Yes.

The Court: And he has the right to have a jury trial if [3*] he wishes. Is that right?

Mr. Barnett: Yes, your Honor, I have explained it.

The Court: Very well, I am willing to try the case non-jury and accordingly direct that a minute entry be entered approving request for waiver of jury trial and direct that the case be tried non-jury. Ready to proceed, are you?

Mr. Harris: Yes, your Honor.

Mr. Barnett: Your Honor, the defendant will request special findings.

The Court: That may be.

Mr. Barnett: I'd like to file at this time defendant's brief.

The Court: Proceed with your statement, Mr. Harris.

Mr. Harris: I am willing to acknowledge receipt—

Mr. Barnett: If you will—

The Court: Very well, proceed.

Mr. Harris: In view of the fact the jury has been waived in this case my statement of fact will

*Page numbering appearing at foot of page of original Certified Transcript of Record.

be rather brief. My opening statement, I should say. The government intends to prove the allegations contained in the indictment, that is in particular, that on or about June 14, 1954, at Seattle, Northern Division of the Western District of Washington, a duly authorized Subcommittee of the Un-American Activity of the House of Representatives was conducting hearings in pursuance to [4] Law 601, Section 121, 79th Congress, 2nd Session, and to House Resolution 5, 83rd Congress, that defendant Carl Harvey Jackins appeared as a witness before that Committee at the place and time above mentioned and was asked certain questions which were pertinent to the question then under inquiry. At the place and at the time stated the defendant Carl Harvey Jackins refused to answer those pertinent questions and the allegations of this particular introduction that I am referring to at this time are incorporated and adopted into it as to each of the counts set forth in the indictment, each of said counts merely setting for the question in particular which the defendant Carl Harvey Jackins refused to answer, they are set forth in ten counts and I will attempt to prove that these were asked the defendant in this case. He was asked, "Will you tell the Committee please briefly what your employment record was and has been since 1935?" That he refused to answer that question. Further, that he was asked the question, "How were you employed in 1948?" That he refused to answer that question. Further, that he was asked the question, "Did you hold an official position in 1948 or at any

time prior thereto in Local 46 of the International Brotherhood of Electrical Workers?" And he refused to answer that question. He was asked the question, "Were you expelled from Local 46 of the International Brotherhood of Electrical Workers in 1948?" He refused to answer that question. [5] He was asked the question, "Were you also expelled as business agent of the Building Service Employees' Union sometime prior to 1948?" And he refused to answer that question. Further, he was asked the question, "Were you at any time expelled from Lodge 751 of the Aero Mechanics Union?" And refused to answer that question. He was asked the question, "Is this," referring to his personal counseling, present employment, "something originated by the communist party as part of its program?" And he refused to answer that question. He was asked, "Who are the other people then when you use the word 'we' that are associated with you in this movement?" That is, in the personal counseling business. And he refused to answer that question. He was asked the question, "But what is the name of the group?" And he refused to answer that question. He was asked the question, "Does the group that you referred to have an office with you in the same office that you work in?" And he refused to answer that question.

The Court: Do you wish to make a statement now, Mr. Barnett?

Mr. Barnett: Simply this, your Honor, that certain motions made by defendant were reserved by agreement between counsel and the Court until Judge Lindberg—

The Court: There is an order here reciting Judge Lindberg overruled the motions with the understanding they could be renewed at a later time. [6]

Mr. Barnett: That is right.

The Court: Words to that effect.

Mr. Barnett: That is right, and without waiving any rights by making this statement, we will move for judgment of acquittal at close of the plaintiff's case. The defendant really wants to state that the defendant will be showing that out of some sixty-nine questions or so he answered all but ten and that as to those ten the first six counts fall within clear reasonable apprehension, evidence as to which we will submit to the Court, and that as to the last four counts part of the ground of our motion goes towards the non-pertinency of those four questions plus the matters developed in the brief of the defendant to the effect that those questions came out of an atmosphere which at the time was getting very vigorous and trying and surrounded by the rest of the atmosphere at the hearing, that the Court should then not construe the failure to give answers as being wilfull even if the Court holds that the last four could conceivably be pertinent under the very board rulings and interpretations that anything that Congress inquires into is in some way pertinent.

And I don't want to lose sight of making one other additional fact, your Honor, as to those last four counts. The defendant had given one answer, a long answer somewhat bearing on the subject

matter which shows the non-pertinency of the [7] last four counts. That is all very fully developed in the brief of the defendant. The only other——

The Court: As I understand it, the counts 7, 8, 9 and 10, your contention there is that the, they were not pertinent?

Mr. Barnett: That is one.

The Court: And Counts 1 to 6 inclusive you contend were within the privilege for non-incrimination privilege?

Mr. Barnett: Yes, your Honor.

The Court: All right.

Mr. Barnett: I think that is all I have to say at this time.

The Court: Go ahead.

Mr. Harris: If your Honor please, at this time I'd like to have marked as Plaintiff's Exhibit number 1 the House Resolution No. 2.

The Clerk: Plaintiff's Exhibit No. 1 has been marked for identification.

(Plaintiff's Exhibit No. 1 marked for identification.)

Mr. Harris: And Plaintiff's No. 2, House Resolution No. 5.

The Clerk: Plaintiff's Exhibit No. 2 has been marked for identification.

(Plaintiff's Exhibit No. 2 [8] marked for identification.)

Mr. Barnett: No objection to Exhibit No. 1, your Honor.

The Court: Number 1 is admitted in evidence.

(Plaintiff's Exhibit No. 1 admitted in evidence.)

Mr. Harris: And Plaintiff's Exhibit 3 is a certification, might be called a certification as to the members on the Committee.

The Clerk: Plaintiff's Exhibit No. 3 has been marked for identification.

(Plaintiff's Exhibit No. 3 marked for identification.)

Mr. Barnett: Number 2, no objection to Exhibit No. 2, your Honor.

The Court: Exhibit No. 2 is admitted in evidence.

(Plaintiff's Exhibit No. 2 admitted in evidence.)

Mr. Harris: And I ask to be marked for identification Exhibit No. 4 which is a document referring to the House Report holding the defendant Carl Harvey Jackins in contempt of Congress.

The Clerk: Plaintiff's Exhibit No. 4 has been marked for identification.

(Plaintiff's Exhibit No. 4 marked for identification.) [9]

Mr. Barnett: No objection to Exhibit 3, your Honor.

The Court: Exhibit 3 is admitted in evidence.

(Plaintiff's Exhibit No. 3 admitted in evidence.)

Mr. Harris: Exhibit No. 5, House Resolution 680.

Mr. Barnett: No objection to No. 4, your Honor.
The Court: No. 4 is admitted in evidence.

(Plaintiff's Exhibit No. 4 admitted in evidence.)

The Clerk: Plaintiff's Exhibit No. 5 has been marked for identification.

(Plaintiff's Exhibit No. 5 marked for identification.)

Mr. Harris: And No. 6 I ask to be marked for identification, Speaker of the House Forwarding the Resolution, House Report to the United States Attorney in this district.

Mr. Barnett: No objection to Exhibit No. 5, your Honor.

The Court: Exhibit 5 is admitted in evidence.

(Plaintiff's Exhibit No. 5 admitted in evidence.)

The Clerk: Plaintiff's Exhibit No. 6 marked for identification.

(Plaintiff's Exhibit No. 6 marked for identification.) [10]

Mr. Barnett: No objection to No. 6, your Honor.
The Court: No. 6 admitted in evidence.

(Plaintiff's Exhibit No. 6 admitted in evidence.)

The Clerk: Plaintiff's Exhibit No. 7 marked for identification.

(Plaintiff's Exhibit No. 7 marked for identification.)

Mr. Harris: For the record Plaintiff's Exhibit No. 7 for identification might be referred to as House Report No. 2471.

Mr. Barnett: No objection, your Honor, I have seen this.

The Court: Very well, admitted in evidence, No. 7.

(Plaintiff's Exhibit No. 7 admitted in evidence.)

Mr. Harris: I'd like to call Mr. Tavenner. [11]

FRANK S. TAVENNER, JR.

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

The Clerk: State your full name and spell your last name.

The Witness: My name is Frank S. Tavenner, Jr., T-a-v-e-n-n-e-r.

Direct Examination

By Mr. Harris:

Q. What is your address?

A. Washington, D. C.

Q. And what is your occupation?

A. I am counsel for the Committee on Un-American Activities of the House of Representatives.

Q. Are you presently employed in that capacity?

A. I am.

(Testimony of Frank S. Tavenner, Jr.)

Q. And were you so employed on June 14, 1954? A. I was.

Q. And just briefly what does your position—what are the duties connected with your position as counsel for that Committee?

A. Counsel for the Committee has the task of examining the witnesses both in open and closed session of the Committee. He attends to other legal matters of the Committee such as preparations of bills and reports. He is from time to time [12] assigned particular tasks in connection with investigations.

Q. Now in open meeting, is that a—you said open and closed meeting, I believe. You mean an open public hearing as distinguished, do you, from a closed executive session where the public are not invited? A. That is right.

Q. All right. Now what is the function of the Committee on Un-American Activities?

A. Well, the Committee on Un-American Activities is one of the nineteen standing committees of the House of Representatives and by enactment of a statute it is authorized to conduct from time to time investigations of Un-American activities within the United States and of the dissemination of Un-American and subversive propaganda which originated abroad or which originates in this country and which attacks the principles of the Constitution.

Q. Now——

A. And I might say and other matters related

(Testimony of Frank S. Tavenner, Jr.)

thereto which would enable a Congress to pass remedial legislation.

Q. As a result of that particular function does it hold public hearings? A. Yes, it does.

Q. In different portions or sections of the United States? A. Yes. [13]

Q. And what is the purpose of holding these hearings?

A. The purpose of holding the hearings is to conduct the investigation which the Committee has been empowered by and directed by Congress to conduct.

Q. All right. Now did the Committee hold such a hearing in Seattle, Washington, in June of 1954?

A. It did.

Q. And were you present while those hearings were being held? A. Yes.

Q. Who, if anyone, was Chairman of that Committee on say June 14, 1954?

A. Representative Harold H. Velde from Illinois was Chairman.

Q. Who else besides Congressman Velde sat on the Committee at that time?

A. Other persons on the Committee were Representative Donald L. Jackson of California, Representative Kit Clardy of Michigan, Representative Gordon Scherer of Ohio, Representative Clyde Doyle of California, and Representative James B. Frazier, Jr. of Tennessee.

Q. Now——

(Testimony of Frank S. Tavenner, Jr.)

Mr. Barnett: Excuse me, counsel, did he mention Mr. Scherer?

The Witness: I did. [14]

The Court: He did.

Mr. Harris: I believe he did.

Q. (Continuing): Now on that particular day did you have occasion to have come before you the defendant Carl Harvey Jackins? A. Yes.

Q. In what capacity did he appear?

A. He was subpoenaed as a witness before the Committee.

Q. And the subpoena that was issued by the Committee was for his attendance, was it?

A. Yes.

Q. And was he interrogated at that hearing?

A. Yes, he was.

Q. And by whom, if you recall?

A. I began the interrogation and conducted it throughout except during such periods of time as members of the Committee asked questions.

Q. Now what was the purpose for calling or the reason for calling the defendant before the Committee?

A. Well, the Committee being engaged in the investigation in which it was engaged had learned that this witness in all probability had facts within his knowledge which would have been of value to the Committee in performing its investigative duties.

Q. I am handing you now what has been marked or admitted [15] into evidence as Plaintiff's Ex-

(Testimony of Frank S. Tavenner, Jr.)

hibit No. 7 and ask you to take a glance at that if you will and state whether or not you have seen it before?

A. Yes, sir, I am familiar with this document.

Q. And was that document prepared either by you or under your supervision?

A. Yes, sir, it was dictated by me.

Q. And was that report—and I believe it is a report, is it not? A. Yes, sir.

Q. What in effect did that report do?

A. This report was made pursuant to action of the Committee to the Congress for the purpose of giving the Congress the facts relating to the testimony of this witness together with the recommendation on the part of the Committee that this witness be proceeded against for contempt of the House of Representatives.

Q. And was that in fact done by the House of Representatives? A. It was.

Q. Now in referring to that exhibit does that contain testimony, question and answer form testimony of the defendant and members of the House Committee? A. It does.

Q. Does it contain a complete record of all his testimony [16] before the Committee?

A. No, sir it does not.

Q. All right. Does it contain the ten questions to which I have previously referred to and which are contained in this indictment, does it contain the ten questions and the defendant's refusal to answer those questions? A. Yes, sir.

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Q. Count 1 refers to the question by yourself—

Mr. Harris: I am reading on page 3, counsel, as to count 1.

Q. (Continuing): —of Mr. Jackins, “Will you tell the Committee briefly what your employment record has been since 1935?” Was that question asked by you? A. Yes, sir.

Q. And did the defendant refuse to answer that question? A. Yes, sir, he did refuse.

Q. What was the purpose in asking the defendant that particular question?

A. There were several purposes for asking the question. One was the question of proper identification of the witness. Another question was—another point was this, that the Committee in order to investigate the knowledge which it understood this witness may have regarding communist party activities desired to know his background in the community. That is, how he was employed, what his opportunities for knowledge [17] were in the various fields in which the Committee was interested. Those are the principal things that occur to me now.

Q. All right. Now referring to count number 2 which appears on page 4 about half way down. A question by yourself directed to Mr. Jackins. “Q. How were you employed in 1948?” Do you recall asking him that question? A. Yes, I do.

Q. And do you recall that he refused to answer?

A. Yes, sir.

Q. And in substance and effect would you an-

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swer for the reason for asking that question would be similar to that—

A. Substantially the same.

Q. —as you previously gave to the previous question? A. Yes.

Q. Now referring, following that, immediately following that referring to count 3 of the indictment, a question by you propounded to Mr. Jackins, “Q. Did you hold an official position in 1948 or at any time prior thereto in Local 46 of the International Brotherhood of Electrical Workers?” Was that question asked by you? A. Yes, it was.

Q. And did the defendant refuse to answer that question? A. Yes, sir.

Q. What was the purpose in asking the defendant that [18] particular question?

A. The Committee had information of the special interest of the communist party in the northwestern area within the general field of industries and defense plans and also in unions. The Committee was desirous of ascertaining what opportunity this witness may have had to have known of conditions within the union inquired about.

Q. Now directing your attention to page 5, the bottom of the page in count 4 of the indictment, question by yourself directed to Mr. Jackins, “Q. Now were you expelled from Local 46 of the International Brotherhood of Electrical Workers in 1948?” Was that question asked by you?

A. Yes, it was.

Q. And did he refuse to answer that question?

A. He did.

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Q. And would your answer be, as far as the reason goes substantially the same as the one that you gave for the immediately preceding question?

A. It is.

Q. Now referring to page 6, about a third of the way down, count 5 of the indictment, question asked by yourself of Mr. Jackins, "Were you also expelled as business agent of the Building Service Employees Union sometime prior to 1948?" Did you ask that question? A. Yes, I did.

Q. And did Mr. Jackins refuse to answer that question? [19] A. Yes, sir.

Q. What was the purpose then for asking him that particular question?

A. The purpose was the same as that of the former question relating to the witness' activities within a union.

Q. All right. Now half way down on page 6, referring to count 5, the question asked by yourself of Mr. Jackins, "Q. Were you at any time expelled from Lodge 751 of the Aero Mechanics Union?" Was that question asked by you of Mr. Jackins?

A. That was the same purpose. That was the same question.

Q. And did he refuse to answer that question?

A. He did.

Q. And your purpose was the same, you say, for asking that as the previous one? A. It was.

Q. Now if you refer to page 7 please and about a quarter of the way up from the bottom, the

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seventh count of the indictment, question by Mr. Clardy and I believe you identified him as being a Congressman on the Committee, is that correct?

A. Yes.

Q. This question was asked—was this question asked by Mr. Clardy of Mr. Jackins, “Is this something originated by the communist party as part of its program?” Was that [20] question asked by Mr. Clardy? A. It was.

Q. And did Mr. Jackins refuse to answer that question? A. Yes.

Q. What was the purpose, if you know, for this question being asked of Mr. Jackins?

A. The witness had prior to that time been asked a question relating to his present employment which he had answered but not fully answered and the question by Congressman Clardy taken from its context here in my judgment meant to draw out further facts regarding his present employment.

Q. Now you said that he had given an answer regarding employment. Is that answer found on this particular page? A. Yes, sir.

Q. Is that—could you direct our attention approximately where it is located on the page?

A. About one-fourth of the way from the top of the page you will see a number of asterisks across the page.

Q. Yes, sir?

A. Immediately under it is—appears the name Mr. Clardy and then the question follows: “Witness, you told us that at present you were engaged

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in an occupation that I didn't quite understand. What is it that you are doing at the moment?

“Mr. Jackson: I am engaged in the work of personal counseling.”

The Court: I believe you said Jackson. You mean—— [21]

The Witness: Mr. Jackins, I beg your pardon.

Q. Then it continues on referring to that particular subject, is that correct? A. Yes.

Q. Now referring—directing your attention to page 8 of this Exhibit 7 and a quarter of the way down, a question by Mr. Clardy, was this question asked of Mr. Jackins by Mr. Clardy: “Who are the other people then when you use the word ‘we’ that are associated with you in this movement?” Was that question asked of Mr. Jackins?

A. It was.

Q. And did he refuse to answer that question?

A. He did.

Q. Can you state what the purpose for asking that particular question was?

A. That question, and I should have said in regard to the other question what I am proposing to say now, was also for the purpose of ascertaining facts relating to the man's identity and the business in which he was then engaged. So it was for the dual purpose of identifying the witness more definitely and it was also for the purpose of ascertaining what opportunities this witness had of knowing matters regarding which the Committee was interested in and at the moment I don't

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recall what else Congressman Clardy may have had in mind. To me that was what was the purpose of the question. [22]

Q. Still on page 8 about half way down, a question by Mr. Doyle. And is this Congressman Doyle who is also a member of the Committee at that time?

A. Yes, sir.

Q. Question was asked, "But what is the name of the group?" Do you recall that question being asked by Congressman Doyle of Mr. Jackins?

A. Yes, I did.

Q. And do you recall that Mr. Jackins refused to answer that question? A. Yes.

Q. And what was the purpose of asking this particular question? Was it similar to the one you just stated?

A. This was the same series of questions relating to the same matter.

The Court: Same group now referred to as——

The Witness: Yes, as the group with whom the witness was employed.

The Court: To which he had already made answer?

The Witness: Yes, sir.

Q. Now at the bottom of page 8, question asked by Congressman Doyle, "Does the group that you refer to have an office with you in the same office that you work in?" Do you recall that question being asked of Mr. Jackins by Congressman Doyle? [23] A. Yes, I do.

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Q. And do you recall Mr. Jackins refused to answer that question? A. Yes, sir.

Q. And was the group referred to here the same group that he previously mentioned and identified himself with over on page 7 when asked about his personal counseling service? A. It is.

Q. And that others were engaged in that business of service with him? A. Yes.

Q. And the purpose for asking this question was identical with the purpose previously announced for the preceding questions? A. Yes.

Mr. Harris: If your Honor will indulge me just a moment.

The Court: Certainly.

Mr. Harris: That completes my interrogation.

The Court: Cross-examination Mr. Barnett?

Mr. Barnett: Your Honor, I previously discussed with Mr. Harris the matter of introducing a more complete transcript of the hearing and I will have the witness identify them.

Mr. Harris: As the witness I think has already indicated Plaintiff's Exhibit No. 7 is not complete and I think if [24] counsel desires that the whole go in I have no objection.

The Court: Yes, is that what you have there?

Mr. Barnett: That is right, your Honor.

The Court: Have it marked as an exhibit.

Mr. Barnett: Before having it identified, your Honor, I would like to call attention to something I have done for convenience of counsel and the Court. I am going to have the witness identify

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portions of each pamphlet and in every pamphlet I have left a loose sheet so it will be easier to keep a record, but I am not making that a part of the record at this time.

The Court: The loose sheet will not be a part of the exhibit but let the exhibit be marked. If you have several of these why don't you have them all marked at one time, Mr. Barnett? It will save time.

Mr. Barnett: For purposes of identification, your Honor, I am offering what is called Part 1 of the Investigation of Communist Activities in the Pacific Area further entitled Hearings Before the Committee on Un-American Activities House of Representatives 83rd Congress, 2nd Session, June 14 and 15, 1954. Printed by U. S. Government Printing Office, Washington, 1954, with a number in the lower left-hand corner which is 48069.

With the Court's permission and permission of counsel I won't repeat that heading on all of them. [25]

The Court: It isn't necessary to do that. Let's put a tag on each one that you wish to offer.

Mr. Harris: Did you call that part 1 or part 2?

Mr. Barnett: Part 1.

The Court: Just a minute, gentlemen, get them tagged.

The Clerk: Defendant's Exhibits A-1 to A-5 inclusive have been marked for identification.

(Defendant's Exhibits A-1 to A-5 marked for identification.)

(Testimony of Frank S. Tavenner, Jr.)

The Court: Very well, if you wish to make a statement what these are then counsel can stipulate to it if he chooses to do so, Mr. Barnett.

Mr. Barnett: Very well, your Honor. Exhibits 1 to 5, your Honor, consist of pamphlets issued apparently by the Committee on Un-American Activities and I have already stated the title of them when I was starting to identify Exhibit 1, and they include testimony of different witnesses throughout the hearing and, as well as the more complete testimony of the defendant himself.

The Court: In other words, are they a complete record of the whole Committee hearings or just selected portions?

Mr. Barnett: They are, your Honor, as far as I can make out, a complete record of the hearings in the Seattle area. [26]

The Court: Yes, I am referring to the Seattle hearings.

Mr. Barnett: But some testimony was taken in Los Angeles and a few other places concerning the northwest. They are Communist activities in the Pacific Northwest.

The Court: Is that also included in your offer of exhibits?

Mr. Barnett: Included in the title, your Honor.

The Court: Very well, do you stipulate that the documents are what they purport to be?

Mr. Harris: Yes, your Honor, yes.

The Court: Do you offer them now?

Mr. Barnett: I offer them.

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The Court: Do you object?

Mr. Harris: No, your Honor.

The Court: Admitted.

(Defendant's Exhibits A-1 to A-5 admitted in evidence.)

Mr. Harris: One remark though. I assume counsel is only offering those portions of the Committee hearings contained in here as they refer to the defendant Jackins?

Mr. Barnett: I am referring to such portions as they pertain to the defendant Jackins together with such portions referring to the defendant Jackins.

Mr. Harris: Yes, that is what my—no objection as [27] to that. I don't think the materiality as to other matters—you are not offering those anyway.

Mr. Barnett: Not aside, your Honor—

The Court: That is the way I understood it. However, if you intend it for any broader purpose you should state that now.

Mr. Barnett: There was only one other broader purpose your Honor which I will come to rather quickly. I am intending to show by these pamphlets, your Honor—I don't want to take time to locate it now—that the setting, there is a reference by the Chairman and I think Mr. Tavenner will probably testify to the setting and I will just proceed and ask him questions regarding the setting.

The Court: Very well, go ahead.

(Testimony of Frank S. Tavenner, Jr.)

Cross-Examination

By Mr. Barnett:

Q. Mr. Tavenner, at the time these hearings were held in Seattle, where were they held?

The Court: Doesn't that appear from the transcript? That appears from the transcript, doesn't it?

Q. (Continuing): In the county chambers in the County-City Building, County Commissioner chambers, I believe?

A. Just one moment please, sir. In room 402 County-City Building, Seattle, Washington. [28]

Q. And at the time the hearings were going on there were, there was radio apparatus there, was there? A. There was television apparatus.

Q. And do you recall whether there was radio too?

A. I have no knowledge of the radio. I am not saying that there was not. I have no knowledge of it.

Q. And there was camera apparatus?

A. Yes.

Q. And there were flash bulbs going off while pictures were being taken? A. Occasionally.

The Court: The newspaper people tell me they can do it without that now.

A. (Continuing): The Chairman announced at several times that still photographers should take their photographs before the witness began his testimony and my recollection is that still photog-

(Testimony of Frank S. Tavenner, Jr.)

ographers had flash bulbs and in the taking of the still pictures did flash the bulbs, but that was prior to the witness beginning to testify except probably in one or two instances during the whole period of the testimony. Some photographer stepped out of turn and was immediately told by the Chairman that he should not take pictures while the witness was on the stand.

Q. Now calling your attention to a pamphlet number 1 which is Exhibit 1, does the Court wish to follow the exhibit, your Honor? [29]

The Court: Yes, if you have—thank you.

(Whereupon, exhibit was handed the Court.)

Q. (Continuing): And to page 5987 on the bottom half of the page, there is testimony by Howard Costigan, isn't there? A. Yes, sir.

Q. And calling your attention to the bottom of that page and the answer by Mr. Costigan there is a reference by Mr. Costigan as follows: "Jess Fletcher appeared before the District Bureau on several occasions. He was never a member of a District Bureau but I was conscious of the fact that he was an important member of the communist party in the labor movement. He was vice president of the BSEU." Now, Mr. Tavenner, do you know the BSEU is the Building Service Employees Union?

A. I do not know it, but the initials seem to bear it out.

Q. Well, calling your attention to page 6 of,

(Testimony of Frank S. Tavenner, Jr.)

with reference to count number 5 about which you previously testified under examination by Mr. Harris, near the top of the page is a question by yourself, "Were you also expelled as business agent of the Building Service Employees Union sometime prior to 1948." Would that be some of the prior information in the records of the Committee on the basis of which you wished further information from the defendant?

A. What is your question?

Mr. Barnett: Would you read the question? [30]

(Whereupon, the reporter read back the question as requested.)

A. You mean as to whether or not the Committee had information that he had been expelled, is that—

Q. Yes, and affiliation with this union?

A. I was aware at that time, at the time of examining this witness that there was a newspaper article which stated that he had been so expelled.

Q. While in the broad sense of the question, Mr. Tavenner, the fact that that information was in the files of the Committee and in the record would give it a basis for further interest in this defendant as identified by Howard Costigan with the Building Service Employees Union?

A. I had not connected Mr. Costigan's testimony with this matter in any way.

Q. Well I am referring to the Committee's having that knowledge just as a part of its records.

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A. The only knowledge that the Committee had that I know of relating to this witness' connection with that specific organization was the newspaper article to which I referred.

Q. On the same pamphlet, page 6004 about two-thirds, no almost at the bottom of the page, Mr. Tavenner, I call your attention to the name Harvey Jackins. Do you find it?

A. Yes, I see it. [31]

Q. And I will ask if at the time these hearings were being held in Seattle, whether you were examining the witness Elizabeth Boggs Cohen, or does it appear to be Mr. Wheeler?

A. This examination was conducted by Mr. Wheeler, an investigator of the Committee.

Q. And Elizabeth Boggs Cohen had been identifying communist members? A. Yes.

Q. During the course of this testimony?

A. Yes, that is correct.

Q. And she was asked to continue and does so at page 6004 and identifies Harvey Jackins as a youth leader? A. Yes.

Q. Was that used by you, Mr. Tavenner, as a basis for questioning the defendant with reference to, particularly to the following counts: Count 1?

A. I had that knowledge that this testimony had been given before the Committee and also the knowledge that another witness had identified the witness as having been a member of a group of the Communist party at the University of Washington, and this witness here who testified, Mrs. Cohen had,

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according to my recollection, been a member of the communist party while at the University of Washington, and that was prior to 1935 according to my recollection, and those facts were within my knowledge at the time that this witness was examined, though [32] I asked him no questions about it.

Q. That was a part of the purpose in asking him the first question as to telling the Committee please briefly what your employment record has been since 1935?

A. No, sir, my questions related to a period subsequent to that.

Q. Since 1935? A. Yes.

Q. Now calling your attention to the same pamphlet, page 6027, the testimony of Leonard Basil Wildman, can you tell from the record who is conducting that examination?

A. Mr. Wheeler, an investigator for the Committee.

Q. Now just about the very center of the page I believe there occurs a question from Mr. Wheeler, "Well, now, who were the other leading people in the YCL?" Is that right?

A. That is correct, sir, and may I explain the form of answer that I gave? This was the testimony that I was referring to when I said information was available about the witness' membership in the communist party. I notice it is the Young Communist League instead of the communist party and I desire to correct my testimony accordingly.

Q. This was the testimony of Leonard Basil

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Wildman and he had identified himself as a former communist, had he not?

A. That is correct. [33]

Q. And in answer to one of Mr. Wildman's question said there was a young fellow by the name of Harvey, not Jackson, and Mr. Wheeler spelled it out for him letter by letter, is that correct?

A. That is correct.

Q. Then he said, "Jackins I think it was, Jaulkins, or something like that." Now at the bottom of that page Mr. Wheeler asked a further question, "Who was the organizer for the University Branch, do you recall?" And Mr. Wildman answered Harvey Jackins was. Is that correct?

A. That is correct.

Q. And you—that was the testimony you had in mind a minute or two ago when you testified?

A. Yes.

Q. Directing your attention to what is called part 2 of the testimony of Barbara Hartle at page 6091, this testimony was conducted by Mr. Kunzig, I believe, was it not? A. Yes, sir.

Q. And I call your attention to just a little bit above the half-way point to Mr. Kunzig's question to Mrs. Hartle. "I see, go ahead if you will please." And her answer, "Harry Fugo. I knew him as a member of the communist party in the early 1940's. He was a member, an officer of the Building Service Employees' Union and lived in the north Seattle area." Now I believe Barbara Hartle had admitted her communist [34] connections with activities in

(Testimony of Frank S. Tavenner, Jr.)
the northwest? A. Yes, she had.

Q. And she had done it somewhat voluminously or in great quantity, Mr. Tavenner?

A. Yes, during the course of the hearing she testified at considerable length.

Q. And this identification of the Building Service Employees Union and Mr. Fugo as a member of it, was that within the purpose of the Committee in asking the questions set forth in the counts regarding the Building Service Employees Union?

A. I see no connection whatever between Harry Fugo's membership in this union and that of the witness'.

Q. That wasn't quite in my mind, Mr. Tavenner. I am going to bring that out to the Court a little later, but I mean the Building Service Employees Union became known to your Committee as a source for active communists, did it not?

A. No, sir, I didn't know that it had at all.

Q. I see, but that information is in the record of the connection of numerous communist people such as testified to by Mr. Costigan regarding Jess Fletcher, people identified as communists by Barbara Hartle?

A. You have called my attention to two instances where persons who were known to be members of the communist party were members of that union. If there were others I am not aware [35] of it presently.

Q. On page 6092 I will ask if there is not set forth therein further testimony by Barbara Hartle,

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if you wish to examine that page, identifying Mervin Cole as a communist and district board member and officer of the Building Service Employees' Union? A. That is correct.

Q. And on page 6094 I will ask you if, just a little bit above the middle of the page Mrs. Hartle under examination by Mr. Kunzig makes this answer, "The Building Service Employees' Union Local 6 was for a long time completely communist-dominated. High offices have been held in this union by George Bradley, William K. Dobbins, Mervin Cole, Ward Coley, Jess Fletcher, all of whom I knew to be communist party members at the time that they held these offices."

That appears therein? A. Yes, sir.

Q. On part 3, at the page 6148 just near the bottom of the page I will ask if under further examination by Mr. Kunzig Mrs. Hartle makes the answer, "One carrier who made several contacts while Ralph Hall and I were in Tacoma was William K. Dobbins." "And you knew him to be a member of the communist party?" Question by Mr. Kunzig. And the further answer by Mrs. Hartle, "Yes, I knew him to be a member of the district board and the district committee of the communist party." [36] Then Mr. Kunzig asked, "Can you give us any further identification, any address or anything of that nature," to which Mrs. Hartle answers, "He lived in the Ballard area and was an officer one time of the Building Service Employees Union Local 6." Is that set forth therein?

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A. Yes, that is correct.

Q. Did you have available to you at the time of your investigations here the records and files of the Canwell Committee?

Mr. Harris: If your Honor please, I am going to object so we don't get off on collateral issues.

The Court: What is the purpose of that inquiry?

Mr. Barnett: To show, your Honor, that as part of the purposes of the investigating committee they were following further information which they had received from other sources and I am prepared to, if the witness answers yes, your Honor, I am prepared to have him identify references to Harvey Jackins in the official Canwell Committee publications. If he answers no or he doesn't recollect, I will probably offer the same evidence to the Court, not as strict evidence receivable under rules of evidence, but under the Alexander case as a showing to the Court for reasonable apprehension from whatever sources are available and I don't particularly care in which way the Court receives the evidence.

The Court: In a sense then the matter is cumulative of [37] what you have already shown, isn't it?

Mr. Barnett: Beg your pardon, your Honor?

The Court: In a sense at least it is cumulative of what you have already shown, isn't it?

Mr. Barnett: Yes, your Honor.

The Court: I think for the present I will sustain the objection unless there be some further development in the situation that indicates otherwise. We had better try one case at a time.

(Testimony of Frank S. Tavenner, Jr.)

Mr. Barnett: Exhibit number 7, can you find it for me?

The Witness: I believe it was handed to me.

The Court: 7 was the transcript?

Mr. Barnett: Yes, the citation transcript.

Q. I call your attention to the first page of the transcript, the opening page entitled Reports Citing Carl Harvey Jackins.

Mr. Harris: I have a copy, if the Court desires.

Mr. Barnett: I am sorry, your Honor.

The Court: May I keep this tentatively then?

Mr. Harris: Yes.

Q. (Continuing): I want to call your attention to the fifth line, to the phrase "cause to be issued a subpoena to Carl Harvey Jackins, residence—" certain address, "—occupation Dianetics Institute, 2327 Fourth Avenue." I will ask if the [38] Committee did not have this information already in its files before the, before it called Harvey Jackins as a witness?

A. That information must have been obtained from an investigator of the Committee and for the purpose of serving the subpoena. Just a moment. Yes, sir, that is correct.

Q. And in the last paragraph setting forth the actual subpoena that went forward to the Seattle Police Department it sets forth the same information, does it not, near the bottom by way of repetition?

A. Yes, sir.

Q. Now those in effect are really the same questions as you set forth, that is the request—strike that

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will you Madam Reporter? In effect then in Count 9 when you ask for the name of the group you had it there, did you not Mr. Tavenner, the Dianetics Institute?

A. Yes, that asked the witness to identify the name of the group with which he was associated.

Q. And on——

A. Whether that is the same as his address or not could be a question.

Q. Well, on Count 10, “Does the group that you refer to have an office with you in the same office that you work in?” You had the address of that group, didn’t you?

A. We had his address and that is all.

Q. But you did have information in the files of the [39] counsel before that subpoena was sent out showing his occupation? A. No, sir.

Q. What is the abbreviation in the two paragraphs I pointed out to you which have Occ. Doesn’t that mean occupation?

A. Where do you see that?

The Court: Down in the text of the subpoena, third line down.

A. (Continuing): I don’t know what the abbreviations mean other than that it was his address.

Q. Calling your further attention to the transcript number 7, page 5 thereof, at the bottom of the page, to your statement to the Chairman, Mr. Tavenner, it states, “Mr. Chairman, it was my intention to inquire of this witness as to what knowledge he had regarding Communist Party activities

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in connection with unions of which he was a member or had official positions with, but the witness has refused to answer that he was even a member of the first union that I mentioned. I think, however, that having asked that question I should follow it up even if I do not pursue the others.''

Now Mr. Tavenner, your questions then with reference to his occupation and his employment were to seek what knowledge he had regarding Communist Party activities?

A. It was to find out what knowledge he had regarding [40] Communist Party activities, yes.

Q. You weren't particularly interested in his identification were you? A. At that point?

Q. Yes, at that point.

A. Well, I would say that was part of it. Certainly not the main objective at that time.

Q. Well, as a matter of fact, in the fuller portions of the testimony in part 4 I believe it is, calling your attention to page 6236, question by yourself, you were questioning there, Mr. Tavenner, after Mr. Velde had sworn the witness and you asked Mr. Jackins a lot of questions concerning his identity, where he was born and when he was born, where he resided and the number of years he had been there and his training and when he had been to the University and all of that was by way of identification, was it not? A. Yes, it was.

Q. When you get to the question of his employment records since 1935 you were then interested in his union and employment record, were you not?

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A. Yes, we were.

Q. And in his connection with Communist activities?

A. Yes, and also the matter of further identification of him.

Q. And the same thing applies, does it not, Mr. Tavenner, [41] does it not, to all counts up to and including Count 6, namely that you were interested in his knowledge concerning Communist activities?

A. That was part of it, yes, sir.

Mr. Barnett: Excuse me, your Honor, a moment.

The Court: Certainly.

Q. May I call your attention to Count 6, question, "Were you at any time expelled from Lodge 751 of the Aero Mechanics Union?" with reference to testimony received by the Committee concerning that union appearing in part 2 at page 6093 and this concerned further testimony by Mrs. Hartle, and on page 6093 about half way down I will ask you if she does not make this statement, "The Aeronautical Industrial District Lodge No. 751, which is often known as the Boeing Union. According to my knowledge there was no Communist influence in it, no Communist domination of this union to my knowledge." Then she proceeds. "Mr. Kunzig: Do you mean that this is a situation then perhaps when a union innocently backs this type of organization without knowing what it was like or without having any information about its true aim? Mrs. Hartle: Yes, I believe that that was the case. I was quite well acquainted with the Communist Party influence

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in the Aero Mechanics, being assigned to aircraft concentration work, and I am quite certain there was very little Communist Party influence in it.” That statement is in the files of the Committee? [42]

A. Yes.

Q. Now on part 3, page 6160, at the bottom of 6160 where you are now examining, Mr. Tavenner, and you state to Mrs. Hartle, “Since you have mentioned your work in that respect, I believe you have touched on it already in your testimony, where was that work centered in the aircraft industry?” To which she answered, “The South King region of the Communist Party through a district decision had as its assignment concentration on the Boeing Aircraft Company workers to attempt to gain members and influence among the Boeing workers, and specifically in the Aero Mechanics Union of course as the method of doing that.”

And you ask, “The employees in that plant were not confined to a particular union, were they?” And Mrs. Hartle answers, “There is one main important union, Aero Mechanics, but it was possible to recruit many other persons in the Communist Party who were not in that one main local.”

And continuing to the top of the page 6161 you asked a question, “Will you tell the Committee please to what extent, if any, the Communist Party was successful or unsuccessful as the case may be, in its efforts to infiltrate that plant?” And she answered, “Well my estimate of it, and I am certain that that was the estimate of the whole district

(Testimony of Frank S. Tavenner, Jr.)
leadership of the Communist Party, was that during the period of late 1947, 1948 and 1949 at the time I was organizer in [43] that region, that the efforts were almost entirely unsuccessful; from any standpoint of influence or success you would have to say there was no success.”

A. Yes, sir, I recall that testimony very well and she testified that efforts were unsuccessful in that area.

Mr. Harris: If your Honor please, I'd like to register objection to the reading that commenced on page 6161 with the question by Mr. Tavenner and the answer by Mrs. Hartle because as I read it it relates to no information contained in the counts on which this case is being tried, and I believe if I don't register an objection and ask that it be stricken from the record that then I may have waived the right and counsel may go into further matters unrelated to this particular charge, and that is why I raise it at this time.

The Court: Well, the motion will be denied.

Q. With further reference to page 6161 and without intending to read entirely therefrom, your Honor, just to save a little time, the rest of that page is already in the record, but it goes further into her comments regarding the efforts of the Communists to infiltrate the Boeing Airplane Company, does it not? A. Yes, sir, it does.

Q. Now I related all of this as I asked my question of you to count number 6 and ask you if that was not the information you had in mind when you

(Testimony of Frank S. Tavenner, Jr.)

were directing this question to [44] the defendant, count number 6?

Mr. Harris: Does counsel have before him what count number 6, I mean the witness, of what count number 6—

The Court: The count number 6, the question there, Mr. Tavenner, is, "Were you at any time expelled from Lodge 751 of the Aero Mechanics Union?"

A. Yes, will you give me just one moment to examine this record. The testimony which you have called my attention to in part 3 given by Mrs. Hartle was given several days after the testimony of the witness in this case, Mr. Jackins, and therefore at the time of his examination these facts were certainly not in my knowledge and as far as I know were not in the possession of the Committee. In other words, the testimony that you are referring to on page 6160 and 6161 was given on June 16th where the witness in the present case appeared on June 14th.

Q. Well, accepting that for the moment as true, Mr. Tavenner, where then did you learn he had been expelled from Lodge 751?

A. As I mentioned earlier in my testimony, I had seen it in a newspaper article.

Q. Didn't you take testimony from Barbara Hartle in executive session? A. Yes.

Q. Is it possible that that may be in the secret and [45] confidential files which under the rule of the Committee are not necessarily published?

(Testimony of Frank S. Tavenner, Jr.)

A. I took executive testimony of Mrs. Hartle myself and I had no knowledge of that until she testified to it in public session.

Q. Well, that newspaper article then was in the files of the Committee?

A. The newspaper article I am not sure from what source I obtained it.

Q. But it is now in the files of the Committee?

A. It may be.

Q. Now I call attention to part 3—

Mr. Barnett: I don't think I made an excerpt of this counsel or your Honor by way of additional typed copy.

Q. (Continuing): —page 6232. I believe you were examining Barbara Hartle. Have you found it? A. Yes, sir, I have.

Q. You were examining Barbara Hartle and at the, little bit below the half way mark while she is testifying I believe she was answering your question, was she not, at top of page 6232, "Will you describe please to the Committee the type of control the Communist Party sought to exercise over its members?" That was the question you asked, Mr. Tavenner? A. Yes, sir.

Q. And as part of a long answer at the very [46] last sentence of what looks like the third from the bottom paragraph it says as follows, does it not, "When Harvey Jackins was expelled I heard a discussion seriously held as to what his wife would do, go with him to the enemy or stay with the party. The Jackins have three or four children." You

(Testimony of Frank S. Tavenner, Jr.)

asked that question and that answer was partly given? A. That was part of her answer.

Q. Now Mr. Tavenner, with reference to count 8 you answered prosecution's question as to the purpose of that question stating that you wanted to see what other matters that the Committee was interested in concerning communism which the witness might know. Now count 8 refers to the question, "Who are the other people then when you use the word 'we' that are associated with you in this movement?" Then you made the statement that you don't recall what Mr. Clardy had in his mind. Now is it possible, Mr. Tavenner, that a member of the Committee might have something in his mind other than the purpose of the Committee in exploring for information affecting the real purpose of the Committee? A. I have no prior—

Mr. Harris: If your Honor please, just a moment. As to the form of that question I believe it is objectionable in its present form because I think counsel makes the statement that you were asked this question and what was the purpose and you stated the following was the purpose and then [47] proceeds with his question. I think probably it should be referred whether or not that was the witness' recollection as to what he stated.

The Court: Yes, I see there is a possible objection to the form there.

Mr. Barnett: I will restate it, your Honor.

The Court: Inadvertently undoubtedly. It occurs from time to time. Maybe if you will rephrase it.

(Testimony of Frank S. Tavenner, Jr.)

Mr. Barnett: Be glad to.

Q. Did you make the statement that you didn't know what Mr. Clardy had in his mind with reference to the question on count 8?

A. I don't think so. My recollection is that I stated at least two things and stated——

Q. Excuse me witness, I am not asking you now what you stated yourself, but whether or not you now deny or wish to correct that you did not state or did you state that you don't recall what Mr. Clardy had in his mind?

A. That was only part of what I said and I can't——

Q. I am asking just as to that part—counsel objected to me reciting the entire statement as to what you said.

Mr. Harris: No, I didn't object——

The Court: Now gentlemen, it is not clear to me where we are getting. Start over again. Ask a question.

Q. Did you, as part of your answer state that you did [48] not recall what Mr. Clardy had in his mind with reference to the question represented by count 8 to wit, "Who are the other people then when you use the word 'we' that are associated with you in this movement?"

A. My recollection is that I stated I did not know what other matters he had in mind after having stated at least two things that he had in mind.

The Court: That is my recollection of what he said, too.

(Testimony of Frank S. Tavenner, Jr.)

Mr. Barnett: That is all right, your Honor.

Q. Now Mr. Tavenner, how were you able to state the other purposes that he had in mind?

A. I stated I didn't know other purposes that he may have had.

Q. Now you stated some purposes and said he might have had other purposes.

The Court: What he want to know, how did you know that? A. The ones that I did testify?

The Court: Yes.

A. (Continuing): I think I made it clear that that was my judgment of what he had in mind from my experience in asking of such questions. I didn't ask him what he had in mind.

Q. It is possible that he had in his mind no [49] purpose of the Committee represented by your judgment?

A. No, sir, not with my judgment, no, sir; no, sir, I have no reason whatever for thinking that he was not asking the question in good faith.

Q. Now with reference to counts——

Mr. Barnett: Your Honor, may I ask the Court to inquire if there are witnesses here from the Seattle Times and the Seattle Post-Intelligencer?

The Court: Are there witnesses here from the local newspapers? Persons subpoenaed to testify?

(No response.)

Apparently not.

Q. With reference to counts 1 to 6, Mr. Tavenner, we have gone over a lot of information in the

(Testimony of Frank S. Tavenner, Jr.)

record and you have testified that you had other information such as the newspaper article to show why you were interested in this witness. Will you please indicate what information you had that showed that there was anything pertinent about, behind the question represented by count number 7?

A. Will you identify that count to me as the one involving the question, "Is this something originated by the Communist Party?"

Q. That is right, yes.

A. I am sorry, I——

Q. Did you have——[50]

The Court: The question is what was the pertinency of that, words to that effect.

A. Well, the pertinency——

The Court: Pretty much on the self-explanatory on the face of the question.

A. (Continuing): I think it is self-evident from the question.

The Court: I would think so too.

Q. Well, I believe that you had previously stated on direct examination that the reason that that question was asked because it followed a long answer which the defendant had voluntarily given. What was there in his long answer voluntarily given that suggested anything about communism?

Mr. Harris: There again we have the same situation with the type of question that I asked before and I object to its present form assuming that this is what he testified to. My recollection may be dif-

ferent, but I think the witness should be asked if he did so testify.

The Court: Yes, maybe we wouldn't get into the difficulty we got in last time.

Q. (Continuing): Did you previously testify, Mr. Tavenner, that count 7 was, a question represented by count 7 was asked because the witness had previously given a long answer as to his occupation?

A. Yes, I stated that it was. [51]

Q. Well what about that answer in any way indicated the pertinency of asking that question with reference to his answer?

A. The witness had stated the type of business in which he was being employed and this was, as I testified, a series of questions relating to that type of employment which he was referring to and as to which he refused to answer certain questions and elicited finally the question by the, by Mr. Clardy as to whether or not the group was in any way connected, that the work was in any way originated by the communist party as part of its program.

Q. Now I call your attention to, page 7 of exhibit 7, at the bottom of the page following his long answer and to the top of page 8 where that question is set forth again near the top as Mr. Harris pointed out. Do you find the question, "Who are the other people then when you use that word 'we' that are associated with you in this movement"? Is that the—

Mr. Barnett: Excuse me, your Honor, I'd like to ask Mr. Harris a question.

The Court: Certainly, of course.

(Testimony of Frank S. Tavenner, Jr.)

(Whereupon, Mr. Barnett conferred with Mr. Harris.)

Q. (Continuing): I want to call your attention to Exhibit 7 and ask you if there were not two questions asked [52] at that time, and the last half of the dual question set forth at the count?

A. That is correct.

Q. And the first part is, "What do you mean by 'we,' is this something originated by the communist party as part of its program"?

A. Yes, sir, and the part before.

Q. So that really comes out of the answer to the question?

The Court: Same question is asked on the next page separately.

The Witness: That is right.

The Court: So if there is any magic in that it isn't very important because the thing is asked separately on the next page.

Mr. Barnett: Well in effect then, your Honor, there is, 7 and 8 are really one count.

Mr. Harris: I don't think, if your Honor please, that is something we ought to——

Mr. Barnett: I didn't mean I intend to but I was having difficulty correlating the two.

The Court: I shouldn't have interrupted you Mr. Barnett. Explore the reason briefly, not at too great length.

Q. (Continuing): My question was that the first part [53] of count 7 of that question being elim-

(Testimony of Frank S. Tavenner, Jr.)

inated the “we” referred specifically to the long answer then, did it not? A. Yes, sir.

Q. And the last part of it was the interjection of communism by Mr. Clardy?

A. That is correct.

Mr. Barnett: Your Honor, I had asked witnesses from both papers to be here about two-thirty and they should be here now and——

The Court: Are there any witnesses from the Post Intelligencer or Seattle Times now in attendance? Let’s go ahead, Mr. Barnett.

Mr. Barnett: Your Honor, Mr. Morrow forgot to bring photostats with him that I served upon him with a subpoena to compare with the originals, so he is no use to me now.

Mr. Harris: I might make this one——

The Court: Go ahead with interrogation of the witness and get this witness concluded please.

Mr. Barnett: Now if the Court please, we desire to offer by stipulation the record of the proceedings to be played to the Court and have Mr. Tavenner identify the proceedings as being a true reproduction. Mr. Harris and I played it over in his office Thursday or Friday and ——

The Court: What is the point of it? Why are you having [54] that done? What am I going to get out of that that I can’t get from reading it?

Mr. Barnett: You are going to get out of that, your Honor, something about the setting. Now the fact that the government——

The Court: I don’t mind, you know, but I don’t

want to go through that if, unless there is some point in it, you see.

Mr. Barnett: I very especially would like to have the Court hear it because it is our complete second phase of defense to the last four counts in case the Court holds that they are pertinent, rests on the Court's hearing that record to determine the setting, the rapidity of the questions.

The Court: All right, I will hear it. About how long will it take?

Mr. Barnett: About forty minutes.

The Court: We won't be able to do that today. Have you concluded other than that with this witness?

Mr. Barnett: Other than that question, your Honor.

The Court: All right, you can stand down unless you have some redirect?

Mr. Harris: No, I would think this though, if your Honor please, I think counsel "hit the nail on the head" when he said it was a matter of defense, and I think it probably would be improper on cross-examining and I might advise [55] counsel I have heard it and I will stipulate that the only question he wishes to ask Mr. Tavenner about the authenticity I will stipulate to that.

The Court: You stipulate its authenticity then; you don't need this witness any further, do you?

Mr. Barnett: No.

The Court: He isn't going to make a running commentary on it or anything like that? You think I could gather it without that, do you?

(Testimony of Frank S. Tavenner, Jr.)

Mr. Barnett: That is right, your Honor.

The Court: You will be excused from the witness stand, Mr. Tavenner.

Mr. Harris: And I have no redirect examining.

(Witness excused.)

The Court: Nothing further. Do you have anything else?

Mr. Harris: No, and at this time I'd like to announce that the government rests.

The Court: Very well. Are you ready to go forward, Mr. Jackins, or Mr. Barnett?

Mr. Barnett: I am ready to go forward, your Honor, in terms of submitting evidence on reasonable apprehension some of which——

The Court: Anything you want to put in that is admissible you are free to do. Go to it. [56]

Mr. Barnett: This, of course, your Honor, is in rebuttal to the prosecution's case rather than by way of defense.

The Court: Well, the government has rested. Anything you have that you wish me to hear now bring it on. I will hear this recording at a time that is convenient considering we have to empanel a jury in another case and so on in a few minutes. That is why I am not hearing it right now, but if you have some other material thing, go ahead with it. Would it convenience you if we took a recess?

Mr. Barnett: I'd appreciate it.

The Court: If we take a recess we are likely to recess for quite a little while because I am going to

empanel a jury in another case at three o'clock and probably would take an hour, I would think, or maybe thirty, forty minutes at least.

Mr. Barnett: I would appreciate that, your Honor, because it would allow this reporter to go back and get my photostats.

The Court: How much time will you take for the rest of your case not counting the record?

Mr. Barnett: Outside of the record, your Honor, possibly an hour and if argument is going to take place after the Court has received the evidence, possibly sometime tomorrow. [57]

The Court: Yes. Well, I think it would be more——

Mr. Barnett: I would even make this offer, that because of the stepping up of the date of this trial from the 15th which was agreed on before Judge Lindberg, I lost one day in photostating all the Canwell stuff and if I gave that to them tonight, I can have it photostated and put it in tomorrow.

The Court: Here's what we will do. I think it will meet everyone's convenience. We will adjourn this case over now until tomorrow morning at nine-thirty, tomorrow morning at nine-thirty, at which time we will go forward with this present case. In the meantime is that agreeable to all of you?

Mr. Harris: Yes, your Honor.

The Court: You think it would take about an hour not counting the record playing?

Mr. Barnett: That is right, your Honor.

The Court: About forty minutes for the record playing?

Mr. Barnett: Yes, your Honor.

The Court: Better put the Starkovich case over until following lunch. Then we will be sure to conclude this case. This case will be recessed now until tomorrow morning at nine-thirty a.m. The Court will recess until approximately three o'clock when the parties and counsel are ready to [58] proceed empanelling of the jury in the Starkovich case.

(Whereupon, the instant case was recessed at two-forty-five o'clock p.m. and other matters were considered.) [59]

March 15, 1955

The Court: We are now prepared to proceed with the case of United States vs. Jackins. Are you ready, Mr. Barnett?

Mr. Barnett: The defendant is ready.

Mr. Harris: The government is ready.

The Court: We will proceed with that case now. I think we are at the point of the government having rested. Yes.

Mr. Harris: That is my recollection.

The Court: The government had rested and you had a record of some kind you wanted me to hear, I think, and also had some testimony.

Mr. Barnett: Some testimony.

The Court: I think it would be more convenient if you'd offer the testimony since we can attend to the record at any time that is convenient to us and it may convenience witnesses to be heard and disposed of, don't you think so?

Mr. Barnett: Yes, I do, your Honor, and thank you very much.

The Court: Present any other proof that you have. [62]

ROBERT A. MORROW

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

The Clerk: State your full name and spell your last name.

The Witness: Robert A. Morrow, M-o-r-r-o-w.

Direct Examination

By Mr. Barnett:

Q. You are also known as Bob Morrow?

A. Yes, that is correct.

Q. And you were served with a subpoena to appear in court this morning, Mr. Morrow?

A. Yes, I was.

Q. Will you state your address please?

A. 2155 North 100th.

Q. In Seattle? A. Seattle.

Q. Washington. And your occupation?

A. Clerk in the library of the Post Intelligencer.

Q. And did you bring with you some documents at my request? A. Yes, I did.

Q. What do they consist of generally before you identify them?

A. They are photostats of stories that have appeared [63] in the Post Intelligencer.

Q. Would you please hand them to me.

(Testimony of Robert A. Morrow.)

Mr. Barnett: Will you mark these for identification please.

The Clerk: Defendant's Exhibit number A-6 to A-9, both numbers inclusive, have been marked for identification.

(Defendants Exhibits number A-6 to A-9 marked for identification.)

Q. Mr. Morrow, did you at my request compare the Exhibits 6, 7, 8 and 9 with the originals of the articles in the Seattle-Post Intelligencer of which they are photostatic copies?

A. Yes, I did.

Q. And were they true copies?

A. Yes, they are.

Mr. Harris: I might say to the Court that I agree with Mr. Barnett that if such a witness did identify them as being true copies of the original.

The Court: Yes, no question about their being correct copies.

Mr. Barnett: I offer these in evidence, your Honor, for the purpose of showing reasonable apprehension as to the dates specified.

The Court: Are they all articles that preceded June 14th? [64]

Mr. Barnett: Yes, they are your Honor, except—

The Court: If there is anything that came out after June 14th it couldn't possibly have any bearing, could they?

Mr. Barnett: Yes, they are, your Honor.

(Testimony of Robert A. Morrow.)

The Court: Yes.

Mr. Harris: I object to them, your Honor. I assume, I don't know how old they are, but let's see if we can identify A-6. 1941.

The Court: I wouldn't take time to make too lengthy a point on it. Your objection may be entered and you state your ground.

Mr. Harris: It is too far removed from the actual setting because in reference to A-6 the date of the article is March 28, 1941. That is some fourteen years removed from the actual hearing here in question.

The Court: Mr. Jackins was about eleven years old at that time, something like that. No, it is the other gentleman.

Mr. Barnett: Would the Court like to hear my answer to the objection?

The Court: No. Here is what I propose to do. Being a non-jury case and the Court presuming to have judgment enough to differentiate what is material and what is not, I am going to admit it. Let it in and I will consider it fully when we have more time to give attention to it. [65]

(Defendant's Exhibits A-6 through A-9 admitted in evidence.)

Mr. Barnett: That is all I have of this witness.

The Court: Any cross?

Mr. Harris: No, your Honor.

The Court: That is all, Mr. Morrow. Call another.

Mr. Barnett: I'd like to call the representative from the Times. [66]

CHARLES H. TODD

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

The Clerk: State your full name and spell your last name?

The Witness: Charles H. Todd, T-o-d-d.

Direct Examination

By Mr. Barnett:

Q. What is your address, Mr. Todd?

A. 709-14th Avenue North, Seattle.

Q. And are you connected with the Seattle Times?

A. I am Secretary of the Seattle Times.

Q. And were you served with a subpoena in this cause?

A. I was.

Q. And did you at my request bring with you certain documents?

A. I did.

Q. What do those documents purport to be?

A. They are two photostats of copies, portions of copies of the Seattle Times.

The Court: Here again I assume they are conceded to be copies of the originals?

Mr. Harris: Yes, your Honor.

The Court: All right.

Mr. Barnett: There is, however, one matter

(Testimony of Charles H. Todd.)

your [67] Honor I should call to your attention that one of these reprints is dated June 14th, the day of the hearing and it is being offered because it shows the testimony of Barbara Hartle and the mentioning of Harvey Jackins.

The Court: Well, I have grave doubt whether that would have any bearing, but I am going to admit it and we will consider it more fully when we come to the argument.

Mr. Harris: I wish a similar objection.

The Court: Yes, same objection overruled. Exhibits are admitted. Anything further from Mr. Todd?

Mr. Barnett: These can be one exhibit, your Honor.

The Court: Yes.

The Clerk: Defendant's Exhibit A-10 has been marked for identification.

The Court: And admitted in evidence.

(Defendant's Exhibit number A-10 marked for identification and admitted in evidence.)

Mr. Barnett: Nothing further from Mr. Todd.

The Witness: May I be excused, your Honor?

The Court: You may. It's a shame to let newspapermen go with so little cross-examination.

The Witness: I am disappointed myself.

The Court: Each of you gentlemen may leave at your pleasure. Call another please. [68]

Mr. Barnett: If the Court please, I have some further evidence to present to the Court by way of

(Testimony of Charles H. Todd.)

exhibit identification. Will you mark that please as one exhibit.

The Clerk: Defendant's Exhibit A-11 has been marked for identification.

(Defendant's Exhibit A-11 marked for identification.)

Mr. Barnett: Will you pass that to the Court please.

Your Honor, this is offered by the defendant as photostatic copies of what it purports to be, namely photostats of Washington Public Document Volume 3 which I obtained on loan from the State of Washington State Library. They are down to their last three copies and couldn't let me have one to put into Court and I have just very quickly reviewed some of the pages with Mr. Harris and I don't know whether he cares to stipulate these are exact copies, but under the showing——

Mr. Harris: I so stipulate.

Mr. Barnett: Thank you, your Honor.

The Court: These are stipulated to be copies of certain public documents of the State of Washington relating to the so-called Canwell investigation, is that right?

Mr. Barnett: Yes.

Mr. Harris: Yes.

The Court: You are offering them, are you, for [69] what purpose?

Mr. Barnett: For the purpose of showing the frequent mentioning of the defendant Harvey

(Testimony of Charles H. Todd.)

Jackins in testimony running all through here and also the identification of numerous persons mentioned in the Committee hearings June 14th and throughout the Committee hearing investigation of Northwest communist activities and organizations also mentioned therein such as the Boeing and the Building Service Employees and numerous individuals.

The Court: Do you wish to offer objection?

Mr. Harris: Yes, your Honor, the objection previously mentioned. They are too far removed from the hearing and an additional objection, if this particular type of testimony or evidence is allowed to come in, I would believe then that if counsel desired he could get any testimony that the subversive activities control board listed the Northwest, hearings held in Washington, D. C., any other immigration or naturalization hearings where there happened to be some mention of the communist party or Boeing Aircraft Company or unions in this area. It would open up a field of testimony that possibly might have been elicited from Smith Act trials where this same thing was mentioned, and for that reason that additional objection is made as to these documents.

The Court: If the case were a jury trial I would [70] give much more thought to the objection than I do under these circumstances. I will overrule the objection and admit the document and you call my attention at a later time to portions that I should examine.

(Testimony of Charles H. Todd.)

Mr. Barnett: I will, your Honor.

(Defendant's Exhibit A-11 admitted in evidence.)

The Court: Do you have anything further? A-11 is admitted in evidence.

Mr. Barnett: Will you mark this for identification?

The Clerk: Defendant's Exhibit A-12 has been marked for identification.

(Defendant's Exhibit number A-12 marked for identification.)

Mr. Barnett: I am offering at this time, your Honor, Defendant's Exhibit A-12 which is a certified copy of the State of Washington, Secretary of State, of the Articles of Incorporation of Personal Counselors, Inc., showing the same, the organization that Mr. Jackins was working for at the time of the examination which concerned some of the examination of the Committee.

Mr. Harris: If your Honor please, I will object to this because as yet this record does not contain any testimony that the defendant was hired or employed by this particular corporation. Has the address, office place and where this [71] corporation has its particular place of business. These appear to be merely Articles of Incorporation or photostatic copies of the same that contain the name Personal Counselors, Inc., and showing apparently as one of the Board of the five directors named in

(Testimony of Charles H. Todd.)

Article 7 as being Harvey Jackins. I don't believe it is material.

The Court: It is not clear to me what the materiality of it is. However, I will make the same ruling here that I made before. You can call my attention at a later time to whatever force you think this Exhibit has and I will then more fully consider it. For now the exhibit is admitted in evidence over the government's objection.

Mr. Barnett: Thank you very much, your Honor. Will you mark this for identification?

The Clerk: Defendant's Exhibit A-13 has been marked for identification.

(Defendant's Exhibit number A-12 admitted in evidence, and A-13 marked for identification.)

Mr. Barnett: I am offering Defendant's Exhibit A-13, your Honor, which consists of a transcript of issued and certified by the University of Washington showing that it covers the period of time when Carl Harvey Jackins attended that institution. It is offered and will be related during argument, but I can say now that the years mentioned are [72] involved in the first count of the indictment, since 1935, together with other testimony taken in the hearings about Mr. Jackins being a leader at the University. I offer this in evidence.

Mr. Harris: The objection runs to this, if your Honor please, because as far as this particular case

(Testimony of Charles H. Todd.)

is concerned, I don't see the materiality of the document.

The Court: Same ruling as before the document is admitted in evidence. I will consider more fully what effect, if any, it has on the case in argument.

(Defendant's Exhibit number A-13 admitted in evidence.)

The Court: Anything further?

Mr. Barnett: I'd like to call Rev. Poor, your Honor.

The Court: Step forward. [73]

REV. GEORGE LESTER POOR

having duly affirmed, was called as a witness on behalf of the Defendant and testified as follows:

The Clerk: State your full name and spell your last name?

The Witness: George Lester Poor, P-o-o-r.

Direct Examination

By Mr. Barnett:

Q. What is your address, Mr. Poor?

A. 7044 Jones, N.W.

Q. Seattle? A. Seattle 7.

Q. And your occupation?

A. I am the minister in the Methodist Church in Ballard.

Q. What is the name?

(Testimony of Rev. George Lester Poor.)

A. Trinity Methodist Church.

Q. And do you know the defendant?

A. Yes, I have known the defendant ever since I have been the minister there because he has lived in my neighborhood and I have had to walk past his home as I would go from my house to the church.

Q. Is he a member of your church?

A. He is a member of our church now. His children, he has four children within our church school and he and his wife were approached by some of our people and they came to our [74] membership class and when the time of membership arrived I went to their home and they offered not to unite with the church if I thought it would be an embarrassment to the church. And I told them that the church was not concerned about being embarrassed by people, but that if the church had any fellowship, any redemptive qualities of life to offer any help, that that was what the church was for.

Q. Excuse me, Mr. Poor, are the children members of the church?

A. They are members of our church school, yes.

Q. How many years have they been members?

A. I don't know exactly. I have been Pastor there for eight years and I think the children have been coming for almost that length of time. It may be more.

Q. Do you know the reputation of the defendant and his general character in the community?

Mr. Harris: I will object to that. I don't see the materiality, if your Honor please.

(Testimony of Rev. George Lester Poor.)

The Court: Yes, the defendant has not taken the stand and accordingly his reputation for truth and veracity is not in issue at this time. Objection sustained.

Mr. Barnett: That is all I want to ask.

The Court: That is all, Rev. Poor. Do you have any cross? [75]

Mr. Harris: Yes.

Cross-Examination

By Mr. Harris:

Q. When was it that Mr. Jackins applied for membership in your church, sir?

A. About—well, I can't say exactly, about a year and a half.

Mr. Harris: No other questions.

The Court: That is all, Rev. Poor. You are excused and may leave at your pleasure. Call another.

(Witness excused.)

Mr. Barnett: I think your Honor, I want to offer the record now and if the Court will allow me a few minutes I will set it up.

The Court: Would you like me to take a recess for a few minutes while you "set the stage," as it were?

Mr. Barnett: All right, your Honor, I will appreciate that.

The Court: I will recess subject to call when you are ready.

(Whereupon, a recess was had at ten o'clock a.m. until ten-fifteen o'clock a.m., at which time defendant and respective counsel heretofore noted being present, the following proceedings were [76] had, to wit:)

Mr. Barnett: Your Honor, before playing this record I wish to state to the Court that I ran a literal transcript of the tape and it differs somewhat from Exhibit number 7 which did not purport to include all of the hearing, and it differs even a little bit from Pamphlet number 4 which does purport to give more of the hearing. In other words, there are certain changes, certain deletions or certain immaterial errors in addition, but I felt that to save the time of this Court in having the record played back again, that this should be a literal transcript and possibly it should be given now to the Court Reporter who could follow it and a copy to your Honor and a copy to Mr. Harris.

The Court: That is not uncommon of course. I have read a good many hundreds of transcripts of trials in my days as a lawyer and here on the bench and I have yet to find one that is not without some errors, some kind or other.

Mr. Barnett: Just a couple of them are material and it will be pointed out in argument. May I identify this then as defendant's exhibit?

The Court: Yes, you may.

The Clerk: Defendant's Exhibit A-14 has been marked for identification.

(Defendant's Exhibit number A-14 marked for identification.) [77]

The Court: A-14 is a transcript as I understand it, which you have carefully compared to this record or this tape recording and you say that it now is an absolute correct copy of the tape?

Mr. Barnett: As much as is humanly possible, your Honor, and I think probably even the government's secretaries in taking off the tape or in taking their own notes were in difficulty part of the time as appears, but it is the best we can do and the Court will notice on the top of this we have indicated certain indicia as indicating the capitalized words within parentheses, indicates words inserted in pamphlet which are not on the tape.

The Court: There isn't anything that you consider of any particular significance?

Mr. Barnett: Just two or three which I will point out in argument.

The Court: Allowing for human fallacy and error you think with that allowance this is correct?

Mr. Barnett: Yes, your Honor.

Mr. Harris: As I understand Mr. Barnett's offer, that he is offering Exhibit A-14 merely as closely as humanly possible he has taken the words off of the tape, and the tape ought to be marked so that we——

Mr. Barnett: I will offer the tape as part of the same exhibit number, your Honor. [78]

The Court: Very well.

Mr. Harris: I wouldn't want this to go in as being what actually transpired because it would be in conflict with what the official court reporter or reports of the Committee has verified as being the true recordation and so forth. It is not offered for

that purpose as I understand it.

The Court: The tape itself will be marked A-14. The transcript that Mr. Barnett has just referred to will be A-14-A, being the understanding that A-14-A is a transcript which Mr. Barnett says is a literal transcript of the tape recording. Whatever purpose it may have we will consider at a later time.

(Defendant's Exhibit number A-14-A marked for identification and admitted in evidence.)

DEFENDANT'S EXHIBIT No. A-14-A
TRANSCRIPT OF TAPE RECORDING OF
TESTIMONY BY HARVEY JACKINS TO
THE HOUSE COMMITTEE ON UN-AMERI-
CAN ACTIVITIES JUNE 14, 1954. (This
transcript has not been proofread.)

Differences, inserts and omissions from Pamphlet, Part 4, as prepared by the Government Printing Office (Defendant's Exhibit), are shown as:

Capitalized words within parenthesis indicate words inserted in Pamphlet, Part 4, and not appearing on the tape recording.

Capitalized words indicate variations, differences and omissions from Pamphlet, Part 4, and appearing on the tape recording.

In two instances, where a portion of the testimony on the tape has been omitted from Pamphlet, Part 4, special mention is made at the point and one parenthesis sign is used. In one instance, it is noted that the tape recording shows a difference between

Defendant's Exhibit No. A-14-A—(Continued)
the Pamphlet, Part 4, and the Congressional Record citation (Plaintiff's Exhibit 7).

Mr. Tavenner. What is your name, please, sir?

Mr. Jackins. Harvey Jackins.

Mr. Tavenner. Will you spell your last name, please?

Mr. Jackins. Certainly. J-a-c-k-i-n-s.

Mr. Tavenner. When and where were you born, Mr. Jackins?

Mr. Jackins. I was born June 28, 1916, in northern Idaho.

Mr. Tavenner. Where do you now reside?

Mr. Jackins. In the city of Seattle, sir.

Mr. Tavenner. How long have you lived in the city of Seattle?

Mr. Jackins. A number of years, sir.

Mr. Tavenner: Approximately how long?

Mr. Jackins. Approximately twenty.

Mr. Tavenner. Will you tell the committee, please, what your educational training has been, that is, your formal educational training?

Mr. Jackins. I think so. I have been to grade school; I have been to high school; I have been to college.

Mr. Tavenner. How many years have you had in college?

Mr. Jackins. Somewhat less than four years.

Mr. Tavenner. At what institution?

Mr. Jackins. At the University of Washington.

Mr. Tavenner. When did you complete your training at the University of Washington? In what year? [1*]

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Jackins. I have not completed my training at the University of Washington.

Mr. Tavenner. WELL, AT THE TIME YOU STOPPED your work at the University of Washington?

Mr. Jackins. The last work that I took at the University of Washington, I believe would be around 1950.

Mr. Tavenner. How many years had you been in attendance at that university immediately prior to 1950? In other words, was there a gap in your attendance at the University of Washington?

Mr. Jackins. Yes.

Mr. Tavenner. Of a period of years?

Mr. Jackins. Yes, there was.

Mr. Tavenner. WELL, explain it briefly to us.

Mr. Jackins. Well, to the best of my recollection, I took no class work at the University of Washington between the years of 1937, or thereabouts, and around 1950.

Mr. Tavenner. Were you in the Armed Forces at any time between 1937 and 1950?

Mr. Jackins. I would like to confer with Counsel, sir.

Mr. Velde. Certainly.

Mr. Velde. Alright. Proceed. Answer the question, please.

Mr. Jackins. Will you repeat it, please?

Mr. Tavenner. Did you serve in the Armed

Defendant's Exhibit No. A-14-A—(Continued)
Forces of the United States at any time during the period 1937 to 1950?

Mr. Jackins. I did not.

Mr. Tavenner. Will you tell the committee, please, briefly, what your employment record has been since 1935? [2]

Mr. Jackins. Well, because of the character of this committee and the nature of these hearings, I must decline to answer that question, claiming my privilege under the fifth amendment to the Constitution not to bear witness in any attempt (ON THE PART OF THIS COMMITTEE) to involve me.

Mr. Clardy. Mr. Chairman.

Mr. Velde. Mr. Clardy.

Mr. Clardy. I ask that he be directed to answer. (THE QUESTION)

Mr. Velde. Certainly. That is a very simple question and the Chair sees no way in which that WOULD incriminate you (TO ANSWER IT) whatsoever, AND you are directed to answer the question, SIR.

Mr. Jackins. What the Chair sees and what might be the facts in the situation are not necessarily the same, Mr. Chairman. I have declined to answer, invoking my privilege under the fifth amendment not to bear witness against myself in any attempt on the part of this committee, considering THESE circumstances, to involve me.

Mr. Velde. And upon further consideration, you still invoke the fifth amendment, upon the Chair's

Defendant's Exhibit No. A-14-A—(Continued)
direction that you answer the question; is that correct?

Mr. Jackins. I have been informed by counsel that if I were to give testimony before this committee which would be at variance with witnesses who have appeared before this committee, seeking to curry the favor of the committee because of prison sentences hanging over their head, that regardless of the obvious lack of integrity of such witnesses I would still be subjected to possible charges of perjury.

Mr. Velde. Mr. Witness, the testimony of the previous witness has nothing to do with your testimony, WHATSOEVER.

Mr. Jackins. It has a great deal to do with the situation.

Mr. Velde. I AM ASKING YOU—I AM ASKING YOU WHETHER OR NOT YOU WILL ANSWER THE QUESTION OR WHETHER you refuse to answer IT UPON DIRECTION BY THE CHAIR? [3]

Mr. Jackins. I have answered very clearly THAT I DECLINE to answer that question under my privileges guaranteed BY the fifth amendment TO THE CONSTITUTION not to bear witness against myself in any attempt on the part of this committee IN THE SITUATION IN WHICH IT WORKS to involve me.

Mr. Velde. THEN upon direction by the Chair to answer THE question as to YOUR EMPLOYMENT—your previous employment—you still re-

Defendant's Exhibit No. A-14-A—(Continued)
fuse to answer upon the grounds of the fifth amendment. Is that correct?

Mr. Jackins. I have answered that very clearly, Mr. Chairman.

Mr. Velde. NOW, how do you mean that you HAVE answered very clearly? By refusing to answer? Can you tell me of one way in which your previous employment—I MEAN GIVING US THE BENEFIT OF YOUR PREVIOUS EMPLOYMENT—COULD incriminate you?

Mr. Jackins. Under other circumstances, Mr. Chairman, I would be very glad to discuss those questions, with you or with anyone else, but under the conditions of this hearing and the character of this committee, I must decline to answer that question as well, invoking my privilege under the fifth amendment TO NOT bear witness against myself.

Mr. Velde. ALRIGHT. Proceed, MR. COUNSEL.

Mr. Tavenner. How are you now employed, Mr. Jackins?

Mr. Jackins. I am employed as a personal counselor.

Mr. Tavenner. In what type of business?

Mr. Jackins. In the field of professional personal counseling.

Mr. Tavenner. How long have you been so employed?

Mr. Jackins. Three and a half years, approximately.

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Tavenner. That would take you back to 1950, to 1951, approximately, would it not?

Mr. Jackins. Approximately.

Mr. Tavenner. How were you employed in 1948? [4]

Mr. Jackins. Considering the character of this committee and the nature of these hearings, I must decline to answer that question, claiming my privilege under the fifth amendment not to bear witness against myself in any attempt to involve me.

Mr. Tavenner. Did you hold an official position in 1948 or at any time prior thereto in Local 46 of the International Brotherhood of Electrical Workers?

Mr. Jackins. Under other circumstances, I would be glad to discuss that, but considering the nature of this committee and the character of these hearings I must decline to answer that question, claiming my privilege under the fifth amendment to the Constitution TO NOT bear witness against myself in any attempt to involve me.

Mr. Velde. May I ask the witness this? (QUESTION) Under what other circumstances would you be willing to answer that question?

Mr. Jackins. Under conditions otherwise than before this committee, Mr. Chairman. I would be glad to discuss the entire issue with you publicly.

Mr. Velde. To whom would you give an answer to that question other than THE members of this committee?

Mr. Jackins. Mr. Chairman, I would be glad to

Defendant's Exhibit No. A-14-A—(Continued)
discuss these issues with you say, in public debate, in a public discussion before a friendly—before an audience or before the general public. The actions of this committee in presenting testimony—

Mr. Scherer. Mr. Chairman.

Mr. Jackins. —from thoroughly discredited (PEOPLE) and people without integrity this morning has left me with no choice but to decline to answer that.

Mr. Clardy. Regular order, Mr. Chairman.

Mr. Velde. Regular order is ordered. Would you go under oath before me and discuss this question as to your employment OR matters involving your connection with the Communist Party? [5]

Mr. Doyle. I think, Mr. Chairman, he has volunteered—

Mr. Velde. Just a moment, Mr. Doyle. May I ask if he will answer this question FIRST?

Mr. Jackins. In your present capacity, Mr. Chairman?

Mr. Velde. Yes, in my present capacity naturally.

Mr. Jackins. My answer would be the same as I have made.

Mr. Clardy. NOW, MR. CHAIRMAN, may I suggest something?

Mr. Velde. The Chair recognizes the gentleman from Michigan.

Mr. Clardy. May I point out that since he has indicated a willingness to answer these questions before other people, he has waived any protection that

Defendant's Exhibit No. A-14-A—(Continued)
 he might claim under the fifth amendment and I
 ask THEREFORE that he be directed to answer
 that last question,

Mr. Velde. Yes, I think the gentleman from
 Michigan is absolutely right. You are directed to
 answer the last question.

Mr. Clardy. Mr. Chairman.

Mr. Velde. Mr. Clardy.

The portion marked (does not appear in the
 Pamphlet Part 4 or in the Congressional Rec-
 ord.

Mr. Velde. (Will the reporter read that last
 (question over again?

Reporter. (May I ask if this is it? "Under what
 (other circumstances would you be willing to an-
 (swer this question?"

Mr. Velde. (No I'm afraid that isn't it.

Mr. Jackins. (Under circumstances not before
 (an accusatory body such as this.

Mr. Velde. (That isn't the question. She read the
 (wrong question. The last question concerning his
 (testimony under oath. [6]

Mr. Coughlan. (I think my client has the right
 (to ansyer that question, Mr. Chairman.

Mr. Jackins. (Your client's right to answer that
 (question will be observed as soon as the question is
 (located by the reporter. I think the direction to the
 (reporter was to locate the question.

Mr. Clardy. MR. CHAIRMAN, so that the rec-
 ord may be complete at this point I want to make

Defendant's Exhibit No. A-14-A—(Continued)
this observation, so that we will not overlook it. When he has stated that he is willing to answer that question under certain other circumstances or to other people, it is obvious that any claim that there is any protection afforded him by the fifth amendment is false because if he is willing to state it to others then there can be no possibility of it incriminating him AND I ASK THEREFORE THAT HE BE DIRECTED—

Mr. Velde. I am usually entirely in agreement with the gentleman from Michigan but (I BELIEVE THAT) he hasn't stated YET that he would answer the question (IF HE WERE) under oath AND HE IS UNDER OATH at the present time AND THERE MIGHT BE A DISTINCTION.

Mr. Clardy. I DON'T believe there is a distinction, Mr, Chairman, and ANY statement that he is willing to answer it indicates there can be no incrimination because if he gives testimony somewhere else, under oath or otherwise, he has at least touched upon the subject of which he is now apprehensive, if he has any such apprehension, and that obviously removes any possibility of claiming the fifth amendment in good faith and I am sure he is not claiming it in good faith but is attempting merely to filibuster and TO follow the usual communist party line and NOW I ASK THAT HE BE DIRECTED TO ANSWER.

Mr. Velde. HAS THE REPORTER FOUND THE QUESTION? NO, THAT ISN'T IT. THE SUBSTANCE OF MY QUESTION, MISS RE-

Defendant's Exhibit No. A-14-A—(Continued)
 PORTER, YOU MAY NOT BOTHER ANY FURTHER ABOUT IT. THE SUBSTANCE OF MY QUESTION WAS SIMPLY THIS: (WITNESS) if we engaged in public debate or if we engaged in a private session where you came before me personally, would you answer the question that has been PROPOSED to you about your employment under oath? YOU HAVE BEEN DIRECTED TO ANSWER THAT QUESTION. [7]

Mr. Velde. Yes.

The portion marked (does not appear in the pamphlet Part 4 and the capitalized words within the marked portion do not appear in the Congressional Record.

Mr. Jackins. (The stenographer is in trouble. If (you will wait—

Mr. Clardy. (Witness, I think you can keep (your observations about the conduct of the proceedings to yourself. THE CHAIRMAN IS HANDLING THIS. JUST ANSWER THE QUESTIONS AND YOU WILL GET ALONG A LOT (BETTER AND A LOT FASTER.

Mr. Jackins. (Thank you.

Mr. Clardy. (And we don't care for any thanks (or anything else from you.

Mr. Velde. That's right. And you have been directed to answer that question BY THE GENTLEMAN FROM MICHIGAN, MR. CLARDY. Do you understand, WITNESS, the question that has

Defendant's Exhibit No. A-14-A—(Continued)
been propounded and which you are under direction to answer?

Mr. Jackins. In the byplay here, I have lost track of where we are. If you would care to state the situation again I'LL BE—

Mr. Velde. You have been directed to answer the question as to whether or not in a session with me, in my capacity, whether it be public or private, you would answer the question as to your previous employment, under oath—the oath, of course, to be administered by me?

Mr. Jackins. Might I ask you a question? Is a hypothetical question such as that proper at this point?

Mr. Velde. If you will answer that question, instead of refusing to answer under the grounds of the fifth amendment, then perhaps we might consider the question FROM YOU.

Mr. Jackins. It seems to me to give you an answer to that, Mr. Chairman, would be only expressing an opinion. If it is your desire that I express an opinion about it, I will.

Mr. Jackson. Regular order, Mr. Chairman.

Mr. Velde. Regular order. [8]

Mr. Jackson. It is quite obvious that the witness has no intention of answering any questions which have to do with his alleged membership in the Communist Party; and I think it is SIMPLY a waste of time OF THE COMMITTEE AND OF THE AUDIENCE to pursue it any further. As far as I

Defendant's Exhibit No. A-14-A—(Continued)
am concerned, you can ask ask him the question now and excuse him from THE STAND.

Mr. Velde. WELL, ALRIGHT. The observation of the gentleman from California is very astue and wise. Are you a memeber of the Communist Party?

Mr. Jackins. Considering the character of this committee and the nature of these hearings, I decline to answer that question, claiming my privilege under the fifth amendment to the Constitution not to bear witness against myself in any attempt on the part of this committee to involve me.

Mr. Velde. Have you ever been a member of the Communist Party?

Mr. Jackins. Considering again the character of these hearings and the nature of this committee, I decline to anwer that question, claiming my privilege under the fifth amendment to the Constitution not to bear witness against myself in any attempt to involve me.

Mr. Velde. DO YOU HAVE FURTHER QUESTIONS, MR. COUNSEL?

Mr. Tavenner. Mr. Chairman, IT IS MY PURPOSE to inquire of this witness as to what knowledge he had regarding Communist Party activities in connection with CERTAIN unions of which he was a member or had official positions (WITH) but the witness has refused to answer that he was even a member of the first union that I mentioned. I think, however, that having asked that question, I should follow it up even if I do not pursue the others.

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Velde. You may proceed.

Mr. Tavenner. Now were you expelled from local 46 of the International Brotherhood of Electrical Workers in 1948?

Mr. Jackins. Considering the character of this committee and the nature of these hearings, I must decline to answer that question, invoking my privileges under the fifth amendment. [9]

Mr. Tavenner. I suggest, Mr. Chairman, that he be directed to answer that question.

Mr. Velde. Certainly. You are directed to answer THE question. The Chair can see no reason why the answer to such a question should incriminate you in any way. You are directed to answer the question.

Mr. Jackins. What the Chair can see AND the actual situation need have no meeting ground at all, and again I repeat THAT considering the character of this committee and the nature of these hearings, I must decline to answer that question CALLING UPON my privileges under the fifth amendment not to bear witness against myself in any attempt on the part of this committee to involve me.

Mr. Tavenner. Were you also expelled as business agent of the Building Service Employees Union sometime prior to 1948?

Mr. Jackins. Considering the character of this committee and the nature of these hearings, I must decline to answer that question, invoking my privileges under the fifth amendment to the Constitution

Defendant's Exhibit No. A-14-A—(Continued)
not to bear witness against myself in any attempt on the part of this committee to involve me.

Mr. Tavenner. May I suggest that the witness be directed to answer that question?

Mr. Velde. Again, without objection, you are directed to answer that question.

Mr. Tavenner. Were you expelled from lodge 751—

Mr. Velde. Just a minute, MR. Counsel.

Mr. Tavenner. Excuse me, sir.

Mr. Jackins. Where are we now?

Mr. Velde. Again you are directed to answer the last question. Again the Chair and I AM SURE (THE MEMBERS OF) the committee sees no reason why you could possibly be incriminated by an answer to that question. You are directed to answer the last question.

Mr. Jackins. The same answer as I gave to the previous question for the reasons which I previously stated. [10]

Mr. Tavenner. Were you at any time expelled from lodge 751 of the Aero Mechanics' Union?

Mr. Jackins. The same answers which I gave to the previous questions and for the same reasons WHICH I stated.

Mr. Clardy. I ask that he be directed to answer.

Mr. Velde. Again you are directed to answer the question.

Mr. Jackins. Considering the character of this committee and the nature of these hearings, I decline to answer, invoking my privileges under the

Defendant's Exhibit No. A-14-A—(Continued)
fifth amendment to the Constitution not to bear witness against myself in any attempt on the part of this committee to involve me.

Mr. Scherer. Mr. Chairman.

Mr. Velde. Mr. Scherer.

Mr. Scherer. Witness, isn't it a fact that you were expelled from all three of these unions because of your Communist Party activities within the unions? Isn't that a fact?

Mr. Jackins. Considering the nature of this committee and the character of these hearings, I must decline to answer that question—

Mr. Scherer. Were you on the communist party payroll?

Mr. Jackins. —and for the same reasons.

Mr. Scherer. Were you on the communist party payroll?

Mr. Jackins. The same answer as to the previous question and for the same reasons.

Mr. Scherer. Isn't it a fact that you have refused to answer the question as to your previous employment because you were on the payroll of the Communist Party in this country during those years?

Mr. Jackins. The use of my privileges under the fifth amendment does not in any sense imply that any of your statements are fact. I am invoking my privileges and declining to answer that question under the fifth amendment in order not to bear witness against myself in any attempt on the part of this committee to involve me. [11]

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Scherer. ALRIGHT, Witness, tell me what part of the statements I have just made are false then?

Mr. Jackins. I decline to answer that question and for the same reasons.

Mr. Scherer. I thought you would.

Mr. Jackins. You were correct.

Mr. Clardy. May I ask a question, Mr. Chairman?

Mr. Velde. Mr. Clardy.

Mr. Clardy. Was there any reason, other than that cited by Mr. Scherer, for your expulsion from those three unions?

Mr. Jackins. Well, again I would like to draw your attention to the fact that the use of the fifth amendment and my privileges under the fifth amendment does not construe any guilt on my part or the accuracy of any of the statements made by the members of this committee. I decline to answer **THAT QUESTION** for the reasons previously stated.

Mr. Clardy. Did you ever engage in any espionage activities **FOR THE COMMUNIST PARTY, WITNESS?**

Mr. Jackins. Considering the character of this committee and the nature of these hearings, I must decline to answer that question, invoking my privileges under the fifth amendment.

Mr. Clardy. **YOU MEAN** you won't even answer **THE QUESTION WHETHER OR** not you have engaged in any espionage activities? (**IS THAT CORRECT?**)

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Jackins. Considering the nature of this committee and the character of these hearings, I must decline TO ANSWER, INVOKING MY PRIVILEGES UNDER THE FIFTH AMENDMENT.

Mr. Jackson. WOULD A TRUE ANSWER TO THAT QUESTION TEND TO INCRIMINATE YOU? Would a true answer to the question as to whether or not you have ever engaged in espionage (ACTIVITIES) tend to incriminate you?

Mr. Jackins. The use of the fifth amendment and my privileges under it does not in any way imply incrimination. [12]

Mr. Jackson. YES, we understand the provisions of the fifth amendment very well. WE LEARNED IT BEFORE YOU LEARNED YOUR LINES ON IT. The question is, "Would a truthful answer to the question whether or not you have ever committed espionage tend to incriminate you?"

Mr. Jackins. Because of the VERY nature of this committee and the character of these hearings, I must decline to answer that question, invoking my privileges under the fifth amendment TO THE CONSTITUTION not to bear witness (AGAINST MYSELF IN ANY ATTEMPT OF THE COMMITTEE TO INVOLVE ME).

Mr. Doyle. Mr. Chairman.

Mr. Velde. The Chair recognizes the gentleman from California, Mr. Doyle.

Mr. Doyle. My question does not involve the Communist Party. I noticed (THAT) you said that between 1937 and 1950 you did not render any

Defendant's Exhibit No. A-14-A—(Continued)
military service to your own United States Government. Were you excused during those years for any reason from military service, or why didn't you serve? Would that incriminate you, too, if you told the truth in that regard?

Mr. Jackins. Mr. Congressman, I feel that you are trying to bait me on that, but I will try to answer it, if you wish.

Mr. Doyle. THAT'S WHY I ASKED YOU. I HOPED YOU WOULD ANSWER IT.

Mr. Jackins. The technical reasons involved in my being excused from military service, I assume you would have to refer to the draft boards to get down accurately. To the best of my knowledge, I was excused from military service during those years for three reasons, in series: the first a question of health—that my service was postponed for a year because of a physical examination which turned up certain health conditions of which I was not previously aware; that again my service in the Armed Forces was deferred because of a critical emergency involving the repair of fighting ships, where my skill was badly needed at the particular time; and, finally, I was deferred because I was regarded as too old at the expiration of that period. [13]

Mr. Doyle. What draft board excused you for each or any of those reasons? You have your draft card in your pocket, haven't you. MAY I ASK YOU TO IDENTIFY YOURSELF, PLEASE.

Mr. Jackins. I am unable to give you that information at this time.

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Doyle. Do you have your draft card in your pocket? IF YOU DON'T, YOU OUGHT TO HAVE, I SUBMIT.

Mr. Jackins. I would have to search through my wallet, SIR, to see whether I have it with me or not. I have no notion.

Mr. Doyle. What was the number of your draft board and where (WAS IT)? YOU DON'T REMEMBER?

Mr. Jackins. Not at this time.

Mr. Doyle. What city was it in?

Mr. Jackins. It was in Seattle.

Mr. Doyle. Under what name did you register for military service?

Mr. Jackins. Under the name which I have given this committee.

Mr. Doyle. How old were you when you registered?

Mr. Jackins. If you can refresh my memory as to the date of the first draft registration, I can tell you.

Mr. Doyle. You don't remember?

Mr. Jackins. It would be not necessarily accurate.

Mr. Doyle. Approximately.

MR. JACKSON. I am told that the first draft registration was October of 1940.

Mr. Jackins. I would be at that time then approximately twenty-four years of age.

Mr. Doyle. May I ask one more question, Mr. Chairman?

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Velde. Mr. Doyle. [14]

Mr. Doyle. Every time you pleaded the fifth amendment, I noticed you said "because of the character of this committee". I don't know whether you have a speech ready to make or not—I presume you do—but this committee is ALL composed of Members of your United States Congress. Now do I understand that, because we are Members of the United States Congress and a committee of your Congress, there is something about the character of this committee that you have no respect for or trust in or confidence in? Is that your answer? I assume that that is the basis of your answer. You say "because of the character of this committee" and EVERY one of us is a member of your United States Congress. We're sort of cross-section of the United States Congress, so I assume when you use that language time after time that you are objecting to your United States Congress functioning as we have been authorized to function by the Congress.

Mr. Jackins. Mr. Congressman—

Mr. Doyle. Is that correct?

Mr. Jackins. I think there is a considerable difference between respect for an office and respect for the uses to which it is sometimes put.

Mr. Doyle. Of course the Congress, your Congress, created this committee.

Mr. Clardy. I think you ought to point out that the members were elected unanimously by the Congress to this committee.

Mr. Velde: Not only that but we should also

Defendant's Exhibit No. A-14-A—(Continued)
remind the witness that in this last session of Congress, when our appropriations came up before Congress, they were approved with only one dissenting vote. And so this is a representative body of the people of the United States, who elected the Congress.

Mr. Jackins. Which would not, in itself, establish the character of this committee nor the role which it plays.

Mr. Jackson. The character of this committee and the role which it plays had been LONG ESTABLISHED before the vote to which the Chairman refers. In other words, sir, 362 to 1 means that the people of the United States are speaking through their Congress, through this committee, [15] asking people like you to cooperate with the committee and give us the benefit, and GIVE Congress the benefit, and GIVING the American people the benefit of anything you may know about the Communist conspiracy. That you have failed to do completely and mere words about the character and the motives of this committee isn't going to change the fact that the American people ARE SPEAKING THROUGH THIS COMMITTEE TO YOU, SIR.

Mr. Jackins. Nor WILL IT NECESSARILY CHANGE the judgment of the people on the work of COMMITTEES SUCH AS THIS.

Mr. Jackson. The judgment of the people ON THE WORK OF THE COMMITTEE has already been passed in THE vote of their elected representatives, SIR.

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Jackins. It will be passed again.

Mr. Jackson. WHICH JUDGMENT will be passed again comes the revolution. THAT WE ARE TRYING TO PREVENT.

Mr. Jackins. I believe that the judgment of the people on committees such as this is AT THE PRESENT TIME being passed, in a large measure, BY THE TELEVISION AUDIENCES WHICH OBSERVE THE WORKINGS OF PARALLEL COMMITTEES TO THIS.

Mr. Jackson. We are talking about this committee, sir, WE'RE NOT TALKING ABOUT any other committee, and the work of this committee will be reflected in the response and the reactions we receive from the people of Seattle and the Northwest area which, if it follows the course of other reactions, will be overwhelmingly favorable.

Mr. Jackins. If Mr. Doyle has an honest question THERE as to why I raised the question OF THE CHARACTER OF THIS COMMITTEE, I think I can EXPLAIN it to him.

Mr. Clardy. Mr. Chairman, I ASK that HE BE TOLD TO DESIST. HE has no business insulting Mr. Doyle or the Congress by using the language that he has and I ask that it be stricken.

Mr. Jackins. I meant no insult to Mr. Doyle at all.

Mr. Velde. I am sure that Mr. Doyle would not ask any dishonest question whatsoever. Do you want to repeat the question, Mr. Doyle; OR DO

Defendant's Exhibit No. A-14-A—(Continued)
YOU WANT TO GO ON TO MORE PRODUCTIVE— [16]

Mr. Doyle. I think the witness remembers my question VERY THOROUGHLY. I am sure he remembers it. I don't think, in view of your heavy load of witnesses, that I care to take more time.

Mr. Jackins. Mr. Doyle—

Mr. Doyle. May I say this to you, though, young man? I am very much disappointed in you that, as a young American THAT you take the position you do. You evidently have a leadership ability; you have evidently been a leader in labor; you HAVE evidently been blessed by your country, and I hope that you will reverse your opinion OF YOURSELF.

Mr. Jackins. You need not be disappointed in me, sir and I think—

MR. DOYLE. I AM.

Mr. Jackins. —I could easily explain to you why, but not under conditions such as this.

Mr. Jackson. Mr. Chairman.

MR. DOYLE. I WITHDRAW. I DON'T CARE FOR ANY MORE QUESTIONS.

Mr. Velde. Mr. Jackson.

Mr. Jackson. We have already taken up, I understand, forty minutes of time with witnesses, with many witnesses still to be heard. I would very respectfully suggest the regular order, in order that we may DISPOSE OF THIS WITNESS.

Mr. Velde. The Chair certainly concurs with the gentleman from California, Mr. Jackson. Mr. Coun-

Defendant's Exhibit No. A-14-A—(Continued)
sel, do you have any further questions to ask of this witness?

Mr. Tavenner. May I ask the witness one further question?

Mr. Velde. Proceed.

Mr. Tavenner. I think I should advise the witness that there has been heard in executive TESTIMONY before this committee the witness Elizabeth Boggs Cohen, C-O-H-E-N, and the witness Leonard Basil Wildman, both of whom were heard on May 28, 1954, and both of whom identified you as at one time an active member of the Communist Party, Mr. Wildman having identified you as the organizer of a branch of the Communist Party, while you were in attendance [17] at the University of Washington. This is your opportunity, if you desire to take advantage of it, of denying those statements, if there is anything about them which is untrue.

Mr. Jackins. Is that a question?

Mr. Tavenner. Yes. Do you desire to deny any part of that identification?

Mr. Jackins. Considering the character of this committee, and the nature of these hearings, I must decline to answer that question, calling upon my privileges under the fifth amendment to not bear witness against myself in any attempts of this committee to involve me.

Mr. Tavenner. Have you ever been a member of the Communist Party?

Mr. Jackins. The same answer as before for the same reasons.

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Tavenner. I have no further questions, Mr. Chairman.

Mr. Velde. Mr. Jackson.

Mr. Jackson. No questions, MR. CHAIRMAN.

Mr. Clardy. Yah, a few. Witness, you told us that at THE present time you were engaged in an occupation that I didn't quite understand. What is it you are doing at the moment?

Mr. Jackins. I am engaged in the work of personal counseling.

Mr. Clardy. What do you mean by personal counseling? That is what I do not understand.

Mr. Jackins. I work with individuals to help them with their personal problems.

Mr. Clardy. What kind of personal problems?

Mr. Jackins. With their emotional difficulties, with the inhibitions which keep them from functioning well as individuals.

Mr. Clardy. Are you a medical expert OF SOME KIND or a psychiatrist OR SOMETHING OF THAT SORT?

Mr. Jackins. Not at all. The approach is quite different FROM either of those fields. [18]

Mr. Clardy. Do you belong to some profession of some sort that is licensed by the State to engage in this SORT of activity, or is this something that you have invented yourself? I am serious about this. I want to know because I don't understand.

Mr. Jackins. May I have a little latitude in explaining it, sir?

Mr. Clardy. I haven't limited you.

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Jackins. Fine, I am working with a very new approach to the problem of individual human beings. We have discovered, a group of us, that apparently anything wrong with an individual human, any limitation on his ability, his enjoyment of life, his ability to be intelligent in any situation is purely and solely the result of THE experiences of hurt THAT he has endured, including emotional distress WHICH IS quite as important as experiences of physical pain. That anything less than rational or able about an individual human being can be traced as a literal expression of experiences when he has been hurt, beginning very early and accumulating, and that it is possible, in a teamwork relationship, for one person's intelligence as a counselor to be linked with that of the person who is enduring the difficulty or the limitation or the emotional problem—to go back in memory in effect and by repetitively seeking out these experiences of hurt, discharging the stored up, painful emotion and assisting the person to think them over and over and over again, it is possible to free an individual from the inhibiting effect of the distresses which have stored up on him during his life. Now this is a very exciting field. The possibilities implicit in it—and we are pioneering—the group with which I work—are amazing.

Mr. Clardy. MAY I ASK YOU, WHO do you mean by "we"? Is this something originated by the Communist Party as part of its program?

Mr. Jackins. Considering the character of the

Defendant's Exhibit No. A-14-A—(Continued)
committee and the nature of these hearings, I must decline to answer that question, calling upon my privileges under the fifth amendment.

Mr. Clardy. Mr. Chairman, I ask that he be directed to answer. THERE CAN BE NO POSSIBLE INCRIMINATION THERE. [19]

Mr. Velde. Just a MINUTE, Mr. Clardy. May I again direct the audience, the physical audience, that are present here, that the committee cannot operate as it should under the duties it has with any disturbances of either (EXPRESSIONS OF) approval or disapproval. And the Chair and the committee would appreciate it if the physical audience present would not laugh or make any demonstrations whatsoever, either of disapproval or of approval.

Mr. Clardy. NOW WOULD YOU DIRECT HIM, MR. CHAIRMAN, to answer THAT last question?

Mr. Velde. (I AM SORRY I DIDN'T REMEMBER THE LAST QUESTION.) Would YOU read the LAST question, MISS REPORTER?

Reporter. Is THIS SOMETHING WHICH ORIGINATED BY THE COMMUNIST PARTY AS PART OF IT'S PROGRAM?

Mr. Clardy. I ask THAT he be directed to answer that (QUESTION).

Mr. Velde. Yes, the Chair directs you to answer that question. Is it a part of the Communist Party program?

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Jackins. I must decline to answer that question for the reasons previously stated.

Mr. Clardy. Who are the other people then when you use that word "THEY" that are associated with you in this movement?

Mr. Jackins. Under the conditions of this hearing and considering the nature of the committee I must decline to answer that question.

Mr. Clardy. I think I should caution you, Witness, (THAT) you do not have to decline to answer anything. I am assuming when you say you must that you mean you are. Am I correct?

Mr. Jackins. Certainly.

Mr. Clardy. You have been saying "I must decline". WELL THERE IS NO COMPULSION AT ALL.

Mr. Jackins. For the reasons stated.

Mr. Clardy. Very well. Are those that you associate with the persons that have been identified in this proceeding as members of the Communist [20] Party?

Mr. Jackins. I decline to answer the question for the reasons previously given.

Mr. Clardy. Have you ever been a member of any organization whose avowed purpose is the overthrow of this Government through the use of force and violence?

Mr. Jackins. Under the conditions of this hearing and considering the nature of the committee, I must decline to answer that question, invoking my

Defendant's Exhibit No. A-14-A—(Continued)
privileges under the fifth amendment not to bear witness against myself.

Mr. Clardy. Very well. One final question. Will you give us the names of the persons you are associated with in this activity THAT you have described?

Mr. Jackins. I must decline to answer for the reasons previously given.

Mr. Clardy. Mr. Chairman, I ask that he be directed, YOUR HONOR.

Mr. Velde. Yes, the Chair (MAN) directs you to answer that last question.

Mr. Jackins. I decline to answer the questions for the reasons previously given.

Mr. Clardy. That is all I have, MR. CHAIRMAN.

Mr. Velde. Mr. Scherer.

Mr. Scherer. No questions.

Mr. Doyle. I think I have two questions. You were the one that volunteered your present occupation IS working with a group, and FOR my book that is a waiver of your privilege under the fifth amendment. But what's the name of the group?

Mr. Jackins. Sir, I believe that the committee has sought to involve me in a trap on this question.

MR. DOYLE. THERE IS NO TRAP.

Mr. Jackins. Were I to decline to answer the question, certainly it is conceivable that I will be threatened with contempt charges. On the other hand, to answer it would lead to all sorts of other involvements as I have tried to explain previously.

Defendant's Exhibit No. A-14-A—(Continued)

So that in the circumstances I have no choice but to decline to answer the question, invoking my privileges under the fifth amendment to not bear witness against myself. [21]

Mr. Clardy. Mr. Doyle, I think you should ask the Chair to direct him to answer it, because I think THAT is clearly beyond the pale.

Mr. Doyle. I ask that the Chairman direct the witness to answer that question.

Mr. Velde. Certainly. There is no possible way that you can incriminate yourself by an answer to that question. You are directed to answer the question (MR. WITNESS).

Mr. Jackins. I decline to answer it for the reasons previously stated.

Mr. Doyle. NOW two more questions. Does THE office have an address here in Seattle? Do you work with a group with an office in some building? If so, where is that office?

Mr. Velde. WELL, may I suggest (MR. DOYLE) that you ask one question at a time. Would you ask (HIM) the (FIRST) question again?

Mr. Doyle. Yes. DOES THE GROUP YOU WORK WITH—YOU TESTIFIED, you volunteered that you were working with a group. Does that group have an office in Seattle?

Mr. Jackins. I work in an office in Seattle.

Mr. Doyle. Does the group that you referred to have an office with you in that same office you work in?

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Jackins. I decline to answer that question for the reasons previously stated.

Mr. Doyle. DO YOU HAVE A PROFESSIONAL CARD? Do you have a business card on you? A professional card that you use for identification of your work as professional advisor? If you have, will you please present me with one? Or present Counsel with one for identification?

Mr. Velde. I respectfully suggest that you ask whether or not he has such a card.

Mr. Doyle. WELL, I ASKED A COMPOUND QUESTION TO SAVE TIME.

Mr. Jackins. To my knowledge I have no card with me. [22]

Mr. Doyle. WELL, DO YOU HAVE ONE ON YOU? WILL YOU PLEASE GIVE IT TO COUNSEL? YOU CARRY A BUSINESS CARD, DON'T YOU? A PROFESSIONAL CARD? Why don't you answer honestly on that?

Mr. Jackins. I said I do not have one with me to my knowledge.

Mr. Doyle. Well, do you sell your services for a fee, a professional fee. Do you collect a fee for the professional advice you give?

Mr. Jackins. I decline to answer that question.

Mr. Doyle. IS THERE A MEMBERSHIP FEE TO THE GROUP—is there a membership fee paid to the group that you claim to be a member of?

Mr. Jackins. I decline to answer that question FOR THE REASONS PREVIOUSLY STATED.

Mr. Velde. Mr. Frazier.

Defendant's Exhibit No. A-14-A—(Continued)

Mr. Frazier. No questions.

Mr. Velde. Is there any reason why this witness should not be dismissed?

Mr. Tavenner. No sir.

Mr. Velde. If not, the witness is dismissed. Will you call your next witness, please?

Admitted in evidence March 15, 1955.

The Court: Very well.

Mr. Harris: Before playing the tape—

The Court: Those exhibits then will be admitted, A-14 and A-14-A. Both will be admitted with that understanding.

Mr. Harris: If Mr. Barnett might not now make the statement for the record as to the setting or the time and place in which the tape was made and the circumstances under which it was made, because certain sounds appear therein that I didn't want reflected as being made in the Committee Room.

Mr. Barnett: Counsel for the government has been [79] very kind and accommodating, your Honor. We couldn't locate any official tapes that were dubbed in by radio or otherwise. We didn't get it fast enough, but there were private parties who had taken tapes as it came over the air and the Court will hear announcers, radio announcers saying, making comments and in the particular home—and I honestly don't know which home it was in—there was a child and the baby wakes up a couple of times. Despite the background counsel—

The Court: Quite a scenario you worked out here.

Mr. Barnett: It is not the whole of the testimony, your Honor. I am sorry. I didn't intentionally work it out for that purpose.

The Court: I am sure you didn't. I was just trying to be pleasant about it.

Mr. Harris: Nor was the setting at the Committee hearing. That ought to be shown, too.

Mr. Barnett: That is right.

The Court: Well, you think that Mr. Barnett's statement is sufficient now to indicate that this tape was taken on a private machine in some private home from the radio broadcast of the proceedings?

Mr. Barnett: That is right.

The Court: It does contain some noises and sounds and speakers who were not actually at the hearing itself.

Mr. Barnett: That is right, your Honor. [80]

The Court: And you think that they will be sufficiently plain from hearing the record that I can tell which is which?

Mr. Barnett: Yes, your Honor.

The Court: All right.

Mr. Barnett: The only two that will stand out will be the baby——

The Court: I am sure I will recognize the baby.

Mr. Barnett: ——and the announcer.

The Court: Go ahead.

(Whereupon, the record referred to was played.)

The Court: Do you have any further evidence to submit?

Mr. Barnett: Excuse me a moment, your Honor.

(Whereupon, counsel conferred with defendant.)

Mr. Barnett: I think that is all.

The Court: Defendant rests?

Mr. Barnett: Yes, your Honor.

The Court: Government anything further?

Mr. Harris: No.

The Court: Both parties rested. About what length of time will you need to present the case to me in argument? The point I am getting at is this. We are going to reconvene the Starkovich case at one-thirty as you know. Counsel is [81] engaged in that case as well and I want to give some consideration to him if he needs it. If we can conclude this case by twelve noon or shortly following, we can do that now. On the other hand, if you think you'd like a little more time than that to present it to me, and I'd like some time to look over this material, maybe we had better continue this case over until the morning and take the argument on this in the morning and conclude in the morning.

Mr. Barnett: I'd appreciate that.

The Court: I will reread your brief. I have already read it once. If you have anything to submit in the way of a brief that you wish me to examine that is not already on file, give it to me and we will have a little more time to hear the case fully tomorrow morning. Is that agreeable to you?

Mr. Harris: All right with me.

Mr. Barnett: Very nice for me, your Honor.

The Court: Very well, I'd be able to give you a little more time in case you felt you need it once you get started. Sometimes you are inclined to estimate your time a little on the short side I know when you come to making your argument and you want more time than you thought. I think we will do that unless there be some convenience to you, either of you, that would be served by other arrangements.

Mr. Barnett: Distinct convenience to the defendant, your Honor. [82]

The Court: Very well. That will be the rule. We will continue this case until tomorrow morning at nine-thirty. Is nine-thirty agreeable to both of you?

Mr. Harris: Yes, your Honor.

The Court: Very well, and if the Starkovich case should go over then we will have to wait until it concludes. You will understand that and keep in touch with the situation.

The Court will recess now subject to call or in any event, to reconvene at one-thirty for the continued trial of the Starkovich case.

(Whereupon, further discussion re Starkovich case was had, and the following proceedings were had, to wit:)

The Court: We will recess this case until tomorrow morning at nine-thirty.

Mr. Barnett: With the consent of Mr. Harris I will rewind the record and then place it with the clerk.

The Court: Give it to the Clerk and the Clerk will put the appropriate tag on it and so on. You gentlemen may leave now if you wish and we will hear further.

(Whereupon, at eleven-twenty o'clock a.m. another matter was considered.) [83]

March 16, 1955

The Court: Are you ready to proceed then with United States vs. Jackins?

Mr. Barnett: May I address the Court?

The Court: Yes.

Mr. Barnett: There was one matter as a part of the defense which I hesitated to institute at the time, but I'd like to ask the Court to consider a motion by the defendant to allow this additional procedure.

I have noticed from reading of some of the cases that in some instances where counsel felt not free to reveal in open court the full extent of reasonable apprehension on the ground that to do so would be to waive the privilege, that some courts have allowed the defendant to go into chambers with the Court. I'd like to offer at this time, make an offer at this time, if the Court would entertain the motion, to allow the defendant to go into chambers with or without counsel, preferably without counsel with particular reference to two of the counts.

The Court: What counts?

Mr. Barnett: Two or three of the counts. Not all of the counts, your Honor. I figured it would be a matter of about five minutes.

The Court: What is your position with regard to that, Mr. Harris?

Mr. Harris: Well, I thought I had exhausted the [86] cases under this particular matter, if your Honor please, and I understand Mr. Barnett has cited some cases or referred to some cases. I would appreciate the citations because maybe there are some I have overlooked. I'd like to see the reasoning of the Court for allowing such a procedure.

The Court: I haven't run across those cases. Could you give me the citation?

Mr. Barnett: Well, your Honor, it would take me a few minutes to find them.

The Court: Before doing so extraordinary a thing as that—just because it is something I haven't heard of is no sign it can't be done because there are a lot of things I haven't heard of, but I want to be sure it is a proper thing for me to do. It strikes me as very unusual and I am not sure without a good deal of thought that I would want to set a precedent for hearing in a criminal case. Hearing in camera certain portions of the evidence strikes me as very unusual and even if the defendant requested, I question whether I should do it. However, if there is authority for it I will be glad to consider it. In other words, I am not one of those who will reject something simply because it is new and unheard of. If it is the proper thing and a good thing to do I will do it.

Mr. Barnett: There are even cases, your Honor, where private statements in writing by the defendant have been handed to the Court as part of the

evidence and I think one of [87] the first was in the Balman-Fagen case where additional evidence was given.

The Court: I will tell you what I will do. I think I will go ahead with the argument and in the meantime you can cite the cases that you say lay a precedent for that procedure and then I will consider it. Let's go ahead with the argument and consider it. It may turn out it isn't necessary, for all we know.

Mr. Barnett: If the Court please, in proceeding with the argument our motions were reserved. Now is it the wish of the Court that I speak to those first before the final summation?

The Court: I think it is just as well to present the whole issues all in a piece. In a non-jury trial I think we need not pay blind obedience to ancient forms. We can get at the whole business at one time.

Mr. Barnett: Thank you.

The Court: You may proceed, if you wish, Mr. Harris.

Mr. Harris: Yes, if your Honor please, I want to apologize first for not having a brief all together for presentation to the Court on this particular case, but I have made an attempt to refer to all the cases and for both cases that your Honor was to hear in this district.

Briefly, I would like to state that on the question of pertinency, that it is felt by the government that pertinency [88] has been established in this case and I think there is authority to the effect that on the question of pertinency the Court determines as

a question of law that can be determined either with receiving some evidence on the question or without receiving evidence on the question, and the cases holding that are the *United States vs. Josephson* case which I believe counsel is familiar with. It is found in 165 Fed. (2d), page 82. That was an Un-American Activities Committee hearing case in which the judgment of the District Court was affirmed by the Circuit Court. Likewise in the *Marshall vs. United States* and in *United States vs. Cunningham*, 176 Fed. (2d), 473 and the other found in 279 U. S. 597.

I merely say that, if your Honor please, that if there is any argument that the one particular question the purpose may not have been clearly shown by the testimony of Mr. Tavenner, I believe on the face of the question it is if it relates to some subject matter already gone into or some subject matter which is, obviously on its face would not link a person with a crime or a possible connection with the commission of a crime, that then your Honor can determine just by looking at the question it is, without hearing any evidence on it, whether that question was pertinent.

Now in reading 192—I am still referring to [89] pertinency—the language pertinent to the question under inquiry is not found in the first clause of 192. It is only found in the second clause of 192 but however it may seem, I think it is running less of a risk of asking and establishing the pertinency question, and for that reason it has been followed in other cases and I attempted to follow it in this par-

ticular case because it there refers to any matter, "any matter under inquiry" in the first section of it, so it would seem that they are eliminating the pertinency there and referring to pertinency in the second portion. As we have understood the 192 it is broken down into two different parts, failure to appear and then failure to testify or refusal to answer a question.

Now I point that out merely on the question of the decision on the matter of pertinency and as I said, I believe we have attempted to prove pertinency here in this particular case regardless of that fact.

The Court: Well generally I am of the impression that in considering pertinency we must take the very broadest view of the inquiry, the question on its face calls for information that under any conceivable theory might be pertinent. Not necessarily directly pertinent, but indirectly pertinent to the subject that Congress has the power to investigate. Then pertinency would be established on the face of it. On the other hand, if the question is [90] of such a character that the question itself does not indicate pertinency, then I would assume the government has the burden of showing by affirmative proof that the question was in fact pertinent.

Mr. Harris: Yes.

The Court: Now——

Mr. Harris: That is the only point I am trying to establish here.

The Court: That was my impression of the law

pertaining to this subject.

Mr. Harris: I think that is brought forward, if your Honor please, in a very recent case in 345 U. S. at page 41 in *United States vs. Rummley*. That was an Interstate Commerce Commission hearing where the witness was interrogated about returning income tax reports. They refused to answer that and the District Court did hold him in contempt on that matter, but then the Circuit Court reversed and the United States Supreme Court affirmed the Circuit Court because they said they were exceeding beyond the bounds of their power of inquiry.

The Court: And on the face of it the question obviously didn't pertain to the subject under inquiry, at least not on the face of it.

Mr. Harris: That is right.

The Court: Many times we know as lawyers that [91] questions may well be pertinent that don't appear so on the face of the question, but in such cases I would apprehend that the government must prove, offer proof that it was in fact pertinent.

Mr. Harris: That is my interpretation as well, if your Honor please. Now I believe that is as much as I wish to say affirmatively without referring to the brief of the defendant on the question of pertinency. I intend to do that in a moment.

The other matter is that there has been some discussion or some testimony concerning the motives and actions and utterances of members of the Committee. As I have viewed the law and attempted to run it down, that is immaterial and has no bearing

whatsoever on the defendant's refusal to answer, and I cite as authority for that *Barsky vs. United States* found in 167 Fed. (2d) at 241. It was an Un-American Activities Committee case and the case was affirmed by the Circuit Court. Likewise *Gerhart Eisler vs. United States*, the same ruling was held and that is found in 170 Fed. (2d) at page 273. Likewise it is an Un-American Activities Committee case and it was affirmed by the Circuit Court.

Further by way of answer to some of the arguments advanced by defendant, by the defendant during the presentation of their case, whether the Committee's practices or [92] procedures are desirable or not desirable, or whether the matter has got to the point where there was bickering between the Committee members and the witness, the Court has held the United States Supreme Court has held in *United States vs. Fleischman* at 339 U. S., 349 particularly at page 365, that the public's remedy is in Congress and not with the courts.

The Court: Political matter.

Mr. Harris: That is correct.

The Court: Not judiciary.

Mr. Harris: If I might then turn, if it please your Honor, to the trial brief advanced by the defendant here, and I have attempted to assist the Court in running down the cases as best I could, and on page 3 is listed the first case *Bowers vs. the United States*. That was a case, your Honor, not involving an Un-American Activities Committee, but a Senate Crime Investigating Committee popularly

known as the Kefauver Committee. That goes on the question of pertinency and the basic principle established by that case was the government must prove pertinency and it cannot be presumed unless on the face of the question it is obvious that it is pertinent.

The Court: Nothing in that case contrary to what——

Mr. Harris: ——What I have attempted to advance or what your Honor has stated from the bench. *United States vs. [93] Orman* cited on page 4, that again was a Senate Crime Investigating Committee. The conviction in that case was affirmed and in subsequence it went to the question of pertinency stating that pertinency, the question on pertinency even though not raised at the time of the Committee hearing, is not deemed waived and may be raised again later before the Court. And I think that is the situation we have here. There was no——it might be argued that it was waived at the Committee hearing, but the only point that this case stands for is that it again can be raised at the trial.

There was another interesting point, I think, found in that case and answers one of the arguments advanced here by the defendant in his brief. That is the pertinency of the question is the problem for the Court, not in sense of the answer, and the answer might be very, very innocent such as a disclosure as we might assume might be made by the defendant that the office place is located at 2611 Second Avenue. The fact that that might be a very innocent answer doesn't necessarily mean that therefore the question was not pertinent and——

The Court: The same thing would be true of where the witness might say, "I don't know." Still the fact that he knew nothing about it wouldn't bear on the question of whether the question was pertinent.

Mr. Harris: That is correct, the question [94] itself was pertinent.

Now the next case cited by the defendant in his brief is found on page 6. It is *McGrain vs. Daugherty* case. That again was a Senate Committee investigating elections and it merely in effect recites the principle that I think we are all agreed upon that the questions must be pertinent to the matter under inquiry. That case was reversed because the Court held that the question there was not pertinent to the matter under inquiry.

The following case cited on page 6 by the defendant was *Sinclair vs. the United States*. That again was a Senate Committee investigating elections 1929. The conviction of the lower court was affirmed and in some respects referred to the language in the *McGrain* case, but it held there that if the question is pertinent the witness must answer that question. However, it said the government must prove the pertinency and it is a question of law for the Court to decide whether or not the question is pertinent and comes within the function of the Committee. It held the lower court held it was and the Circuit Court affirmed.

One other interesting point advanced, I think, in the *Sinclair* case stating in effect that the good faith refusal of the witness was no defense so if

he refused, the fact of good faith in no way deterred from the refusal.

If your Honor please, the next case cited is [95] found on page 9, *United States vs. Fitzpatrick*. That case was reversed and the conviction in the lower court I say was reversed although the Federal Supplement citation that is found on page 9 where they affirm it—excuse me. I believe I have mis-spoken myself. The Fitzpatrick case originally was tried to the Court. The Court wrote an opinion and it is found in Federal Supplement and held that the witness avowedly claimed his right even though he didn't use the magic words, "I refuse to answer on grounds my answer would tend to incriminate me." The only words he used when asked the question was, "Fifth Amendment" and "Fifth Amendment," down the line, and the holding in that case was no particular words were necessary.

The Marcello case, the next case found on page 9, has to do with the Senate Crime Investigating Committee, the Kefauver Committee. The lower court's conviction was reversed because the case, the Court in this particular case held the witness was actually in a position of a defendant. He had been severely implicated by other testimony right into a situation where if he, I believe, even identified himself he might be putting the shoe on for incrimination. But that is not parallel to this particular case because there is no such linkage as might be found by the background that was existing in the Marcello case.

On page 11 is the next case that hasn't already

been [96] referred to by the defendant. He cites the Blau case, Blau vs. United States, found at 340 U. S., 159. There is another Blau case in 340, if your Honor please, and I think there is some comment needed for this reason. Patricia Blau is the one referred to here by counsel and——

The Court: Isn't she the one that was the secretary of the communist party in Colorado?

Mr. Harris: In Denver, and was called before the grand jury and asked to, the questions in that case were, "Were you a member of the communist party?" And she refused to answer those. They were pointedly incriminating in themselves and I think she avowedly refused to answer that question.

Now in the other Blau case, however, which is—her husband was also called before the same grand jury and his name is Irving Blau found in 332 of the same volume, 340. In that particular case the husband there was asked questions concerning his connection with the communist party, three or four of them, and he refused to answer. Then he was asked the question because his wife was then a fugitive, "Where is your wife?" And he refused to answer that both as to the Fifth Amendment and that it was a privilege communication, and the majority opinion in that case which was a seven, or four to three opinion with Judge Justice Clark not participating and one vacancy not yet being filled on [97] the Supreme Court held that the privilege, privilege communication between husband and wife was properly exerted and reversed the case on that point while the dissent, a three court dissent held

that the privilege was not properly exerted, which threw them immediately into whether or not the Fifth Amendment applied, and they threw that out, discarded that by saying the conviction should be affirmed. Justices—Justice Jackson and Justice Vinson were on the majority side.

If your Honor please, the Hoffman case is next referred to on page 12 of the defendant's brief, and in that particular case that was a matter before the grand jury and the language in that case I think is clear that there must be some reasonable apprehension. It just can't be confined to every and all questions asked, so that in the Hoffman case interrogation before a grand jury the questions there had to do with a special federal grand jury that was called in Philadelphia.

The impanelling District Court Judge advised that grand jury that they were going to inquire into various matters, frauds against the federal government, violations of customs laws, narcotics laws, liquor laws and so forth. And so Hoffman was called and he in effect was, could very well have been a co-conspirator or a subject in these various investigations before the federal grand jury, but even there [98] when the questions were asked the Court in substance states there must be some reasonable apprehension for the witness to claim the privilege.

The Court: A distinction that does not seem to be commented upon in any of these cases. What seems of some significance to me is that a number of these cases that have gone to considerable ex-

treme in sustaining the claim of privilege have been cases where the witness was under interrogation before a grand jury. Now of course the function of a grand jury is to consider whether or not the criminal charges should be laid. And I should think that where one is appearing before a grand jury the apprehension of criminal prosecution would be much greater than it would be before a Congressional Committee whose function, of course, is not to prosecute but to investigate for the purpose of legislation. However, I haven't seen any of the cases that comments on that distinction and maybe I am wrong about it, but it does seem to me that it would certainly make an entirely different situation of it.

Mr. Harris: It would certainly go to the point of setting; some of the cases do refer——

The Court: As setting. In other words, a person called before a grand jury might be under a very considerable apprehension of the possibility of his being indicted and there be concerned about answering questions even more remote [99] than he would before a legislative committee, I would think.

If any effect is to be given to the setting in which the questions are asked at all——

Mr. Harris: That is one reason, if your Honor please, I tried to point out the outgrowth of each one of these cases by whether it was a Senate Crime Investigating Committee or crime investigating legislation or grand jury.

The next case is found on page 14 of the defendant's case, Rogers case. It is found in the same

volume as the two Blau cases referred to. And in the Rogers case that was a grand jury matter as well. Rogers in this case, I believe, was the custodian of some records of the communist party. She stated she was a, as I recall, a member of the communist party and that she was——

The Court: I think she was the secretary and had at one time had custody of its records or some such thing as that, and after going along a certain length of time she then decided she wouldn't tell where the records were or who had them, or something of that kind.

Mr. Harris: That is right. She said she had them at one time but didn't have them now so she was asked who she gave them to and refused to answer. The Court holds in effect she had opened the door to self-incriminating questions and on that particular line, that subject, and this was a question relating to that subject. Therefore, she couldn't then [100] stop at her own election and refuse to answer.

I think the government relies rather heavily on that particular case, if your Honor please, in this prosecution as to the last set of questions. I think they are the last four.

The Court: Last four?

Mr. Harris: Yes. The next case referred to by the defendant on the defendant's brief is found at page 17. And that is the Maffie case, a rather recent case decided in 1954. But there again that was a grand jury case investigating the Brinks robbery and Maffie was right in the middle as one of the

principal suspects and was called before the investigating committee and refused to answer. The Court, or the grand jury, excuse me, called before the grand jury and refused to answer. In that particular case he was in the position before that grand jury as a defendant in effect who the grand jury was seeking to get answers to questions, and a few other fellows who were also called and were held in contempt and then reversed finally by the Circuit Court because in effect they said these individuals were there as defendants before the grand jury investigating that Brinks robbery.

But one other point advanced by the Circuit Court of the First Circuit was a statement that the privilege against self-incrimination by these defendants could be [101] invoked except as to all but routine questions. I thought that was rather interesting for this reason, that routine questions I think very logically could be stated as person's name, address, occupation, family and then that is about it.

The Court: Those traditional things that you always start out with with almost every witness.

Mr. Harris: Yes.

The Court: Make you comfortable on the stand if you can.

Mr. Harris: Then the other case is found on page 19. It is United States vs. Kleinman. It is rather unique. It was decided in 1952 by a District Court judge and it was a hearing, outgrowth of a hearing before the Senate Crime Investigating Committee. In that particular case counsel who repre-

sented Kleinman was very astute to say the least. He advised his client before the Committee to refuse to answer because TV cameras were "being played on you." And the notoriety of it—so he took a gamble. There was no precedent for the Kleinman case either before or after for refusal to answer on that basis, but the District Court judge when he was cited for contempt went along with that. He refused to answer based on the fact that the TV cameras were focused on him. He said he wouldn't answer if they were and the cameras weren't turned off and he was asked the question again. That didn't happen, and the District [102] Court then held that he was privileged in that particular case to refuse to answer because of the setting and decorum.

The Court: More on the First Amendment than on the Fifth then?

Mr. Harris: That is right. The Quinn case cited on page 20 also was a case growing out of the Un-American Activities Committee hearing. It basically holds, I believe, that in that particular case the defendant Quinn adopted the language of an individual who appeared immediately before him, before the Committee and says, "I refuse to answer on the same basis as Fitzpatrick did." And the Court said that he had validly claimed the privilege there and need not use any particular language to invoke that privilege. Also the Court went on to say that the witness need not, however, be directed to answer a question. There is a little confusion on that point, but we don't have that in this case.

The Court: No, you mean there was some doubt before this case whether the Committee should not specifically direct the witness to answer the question, whether that rigmarole had to be done in order to lay a foundation for a prosecution?

Mr. Harris: Yes.

The Court: But this case laid that thought abreast——

Mr. Harris: Yes, your Honor. The last case I believe cited is still on page 20 and that is the Bart [103] vs. United States Un-American activities case. The conviction in the lower court was affirmed by the Circuit Court. However, the Bart case has been granted certiorari by the Supreme Court but as yet no opinion rendered. The Circuit Court conviction is still in effect and that case among other things advances this proposition that once the witness before the Committee has refused to answer, he has refused. He can't later come into court and cure that position by wishing to take the stand and answer now truthfully and fully. So I think that is the primary purpose of that particular case.

With that, if your Honor please——

The Court: We almost had that problem precipitated in the previous set of cases of this character. Never heard any more about it. At the opening of the trial the defendant came forward and offered to purge himself by answering, but we never heard any more of it. But that point is involved in that case, you say?

Mr. Harris: That point was involved in the

Bart case and the Circuit Court in the Bart case says once he has refused and——

The Court: Well, just be common sense that it wouldn't do any good to tell the Court about it. It was the Committee that wanted to know the answer.

Mr. Harris: I think that is the reasoning. [104]

The Court: I would think so.

Mr. Harris: If your Honor please, that concludes my argument and I believe that—the government seriously urges that all the questions here, all ten counts are proper both under the law and the facts in this case.

The Court: Well, just before you conclude, I don't have any question in my mind, or very little question about pertinency as to any of the questions. I think almost every one of the questions on its face and particularly when taken in context with the questions preceding and following indicate almost without any further proof their pertinency. But I do have grave concern about privilege, particularly with respect of counts 3, 4, 5 and 6. Those counts all deal with this, the questions to the effect, "Were you expelled——" from such and such a union. Now the evidence in the case indicates that at least there is a suggestion that those particular unions were concerned with communist infiltration during the period under inquiry. I think it does, doesn't it, the evidence indicates that?

Mr. Harris: Yes, if your Honor please, there is some testimony by Barbara Hartle I think, has been introduced in exhibits here stating that there had been infiltration into these unions, you might say,

or domination by communist party of these unions. Not so much the membership being fifty per cent communist or anything like that. There was [105] nothing like that, but the domination over these particular unions had been controlled by the communist party.

The Court: Well, yes, I understand that, but there is some testimony that somehow or other these particular unions were concerned with communism infiltration to one extent or another. Is that not right?

Mr. Harris: I think that is right, your Honor.

The Court: Now taking that circumstance in mind, keeping that circumstance in mind, is it not reasonably conceivable that these four questions in counts 3, 4, 5 and 6 would form a link or could form a link in self-incrimination?

Mr. Harris: Well, if we take count 3, "Did you hold an official position in 1948 or at any other time prior thereto in Local 46 of the International Brotherhood of Electrical Workers?" let's assume the answer was yes. I think that just, other than knowing what position he held was it business agent or secretary or just what was it, would be the only other possible linkage.

The Court: Well, on the face of it of course that much wouldn't do anything, that much, but if he answered that wouldn't he then be obliged to answer other things about his connection with that union?

Mr. Harris: Well——

The Court: Supposing he said yes I was the umqua [106] of that union at that time and then the

next question is, well, in your capacity as the umqua didn't you have this problem or that problem or the other problem and so forth, wouldn't he have waived any privilege he had?

Mr. Harris: I don't believe so.

The Court: Well, that is the question.

Mr. Harris: In other words, let's assume that is the position he held in the union, "Were you then concerned with the communist infiltration in the union?" I don't think that question immediately follows from his stating what position he held in the union. I think that is two different points. In other words, when he has identified his position in the union he has stopped that line or has gone about as far—unless he was asked, "Who are the other members of the Board," or whatever it might have been, to try to establish that he was telling the truth as to his position in the union.

The Court: Well all right. Let's say that then for Count 3. That would answer for Count 3, but it wouldn't answer for Count 4 because Count 4 is just the other side of it. "Weren't you expelled from the union" at such and such a time.

Mr. Harris: If he answered yes——

The Court: If he answered anything about that——

Mr. Harris: ——they could ask him why. [107]

The Court: ——answered anything about it, supposing he said no, then they could go ahead and say, well, isn't it a fact that you were expelled because you were a communist or words to that effect or whatever. Open the whole subject up. So the an-

swer that you give me on number 3 wouldn't fit for either 4, 5 or 6 because there the Committee switched the form of the question and I don't think that that answer—now what is your answer on 4, 5 and 6?

Mr. Harris: Well, it's been weakened considerably. (Laughter.) I will have to concede that if the answer were yes or no that might be very innocent in and of itself, but it might very well open the door and——

The Court: Sure, that is the point. He could stop and say yes or no and that would be the end of it. There would be nothing incriminating about it of course, at least there is no evidence here before me to indicate that membership in these unions is a crime in and of itself, or being an officer of these unions is a crime. So that if he could stop with the answer it would be a very simple problem for us, but the problem arises as to how much further they could go.

I am of the opinion at the present moment that 4, 5 and 6 considering the evidence we have here to the effect that there was a communist problem in these unions, that the question, "Weren't you expelled" in the certain capacity [108] from these unions at a given time, clearly on the face of it indicates a possibility of self-incrimination, and if the witness refuses to answer on that ground, I don't think the Court can inquire very much further about it but must give real effect to the claim of privilege under the amendment, and that is the obligation of all of us to do; the Court or anyone

else is bound to give effect to the constitution that Counts 4, 5 and 6 must go out. I don't think that— unless you want to suggest some—

Mr. Harris: No.

The Court: —other escape from the dilemma we are in on that.

Mr. Harris: My only position is that the questions in themselves are innocent but they very well might open the doors as your Honor has indicated.

The Court: All right, that will cut down our problem to that extent. Counts 4, 5 and 6 are dismissed on the ground that valid claim of privilege under the Fifth Amendment against self-incrimination was made and that the questions in themselves in the light of the testimony in the case indicate that there was reasonable apprehension on the part of the witness that a truthful answer to those questions would incriminate him.

Now on the—before I make any ruling on 3 I will hear from Mr. Barnett and also fully from him. I didn't [109] mean to foreclose you. I just saved you a problem of worrying about 4, 5 and 6.

Mr. Barnett: Thank you, your Honor. I was wondering whether or not since we are on the subject of privilege I shouldn't continue discussing that?

The Court: You use your own feeling about it, Mr. Barnett; it is no matter to me. I have already indicated that in general I am pretty strongly of the impression that all the questions were pertinent and so you are going to have to show me where I am wrong about that and I am perfectly ready to be

shown incidentally, but if you prefer to go on with the privilege business first, that is all right, too, either way.

Mr. Barnett: I think on the matter of pertinency the thing which interests me, your Honor, is the dilemma that I find myself in because of the fact that count 7 is itself pertinent on its face and possibly——

The Court: Really what you are going to say, I think, and what I have in mind, is that it backs up to the question of whether the privilege was waived, doesn't it, last four questions it backs up to that really?

Mr. Barnett: Yes, your Honor.

The Court: Because it is clearly pertinent. This Committee certainly had the right to find—it was pertinent to the matter of Un-American activities to know whether here [110] was an outfit that was engaged in rendering a service as a part of the communist program. It would be foolish to argue that that wasn't pertinent.

Mr. Barnett: But on its face, your Honor, the question standing alone in the indictment does not show any relationship to any testimony, and the only thing I could figure out when I got the indictment was that the government was taking a position not only as to waiver with respect to the preceding discussion of employment which introduced the last four counts, but was also taking the position of waiver which allowed them to introduce the first six counts. So that a great part of my brief was devoted to the whole subject of waiver trying to

protect the right of the defendant to claim his privilege on all counts.

I was not narrowing it down to just the last four.

The Court: No, I understood that when I read your brief. You had that problem of putting it in in advance of trial and I understood that.

Mr. Barnett: In that sense, your Honor, and taking the question out of—just on its face and relating it to the answer it introduces the theories that I have tried to expound in the brief, namely can there be a waiver when an answer is innocent on its face. This long discussion of counseling service given fully frankly and honestly had nothing in it. [111]

The Court: A good deal of it volunteered.

Mr. Barnett: That is right.

The Court: Far beyond what the question called for so that the witness if he got himself in trouble did it on his own hook.

Mr. Barnett: May I suggest to the Court as to that Mr. Clardy indicated that he had put no latitude on the question and the witness indicated he would need a little extra latitude, but he still volunteered and I don't detract from that a bit, but there was nothing in that answer in any way suggesting anything incriminating, nothing that had a bearing on matters which one privileges and the first part of my brief dealing on the subject of waiver refers to a case which incidentally inferentially answers another question raised by the Court during Mr. Harris' discussion, namely the Arndstein case which was a bankruptcy matter in

which it was held privilege was not waived merely because it was a bankruptcy hearing involved, that there was no compulsion on the witness to give testimony which might be used against him.

I haven't fully developed the theory, I didn't think it was necessary. I can later on in argument show where the application of the privilege has been extended to Congressional Committees and it is not limited to grand jury functions. [112]

The Court: Oh, yes, I am well aware of that. I have no doubt of that. All I suggested was that it might well be a different situation confronting a witness appearing before a legislative committee and one appearing before a grand jury.

Mr. Barnett: Before both of them, your Honor, I think the witness might give testimony out of his mouth which would furnish evidence against himself under oath and that could be very well used against him, and there have been cases brought on perjury. We have the Hiss case which was testimony before a Congressional committee in which there was a conflict between himself and Mr. Chambers and the whole essence of whether one may expose himself to any type of crime at that time was not fully explored, but there was an early case of perjury and now I think our Supreme Court in the Blau case and in other cases has carefully pointed out that identification or cross-identification with any activities or any connection with activities or unions or members or other members might expose the witness to prosecution for conspiracy under the Smith Act as well as the matter of perjury.

Now for that reason, your Honor, I think I want to go back. I worked myself into discussing privilege. I want to go back to pertinency and say that I don't think that the defendant by that answer discussed anything that in any way was incriminating. And therefore, could not [113] have waived as to incriminating matters.

The Court: Oh, I see, your thought is that in order to open the door the testimony volunteered or given by the witness in response to a question has got to be in itself incriminating.

Mr. Barnett: That is the law as I understand it.

The Court: Before the door is opened.

Mr. Barnett: That is the law as I understand it, your Honor. For example, take the Rogers case.

The Court: New slant on it that I haven't had in mind before.

Mr. Barnett: Take the Rogers case, your Honor. The Supreme Court said, and the Bart case, both of those persons had very fully discussed their own personal activities but when it came to a discussion of other persons they refused to answer and the Supreme Court said that by their full discussion they had already discussed matters incriminating to themselves and so that opened the door and they couldn't expose themselves to any greater further incrimination.

The Court: Well, that is true that was said in those cases, but I didn't understand the language of those opinions to be—that that language was appropriate in those particular cases all right, but I understood that the language used there laid down

the rule that the testimony given or answer given had to be in itself incriminating. My understanding has been, [114] and my study of these cases—and as you can understand, I have read them all a good many times now—although I don't pretend to remember the details of all of them, that the opening up business occurs when the subject is discussed.

Mr. Barnett: Well, suppose—

The Court: That if a witness answers a question or volunteers testimony concerning a subject, that then he cannot later, having once gotten his foot in the door, cannot then refuse to continue with it after having gone partially in. Am I wrong in that?

Mr. Barnett: I appreciate the Court's statement and would like to point out the dilemma which I referred to earlier, namely that a witness being asked a question that has to do with any subject justified by the desire of the Committee to broadly bring in identification, and here the Court will note on my cross-examination of Mr. Tavenner I reminded him that he had gotten all of his identification in but he said they wanted more identification. They went into a discussion of a subject which he answered—and incidentally he answered practically every question they asked that was not incriminating—but on this one he answered on a subject that really wasn't pertinent in the answer, your Honor, and here I come back to pertinency. There was nothing in there, nothing in that answer that gave Mr. Clardy the right to say, who are these and are they members of the communist party. [115]

And the witness, not knowing anything about waiver law, tightening up, here comes communism.

Now your Honor, that is a tough, tough situation. Deny it and will they produce somebody out of that "we" or "they" who might be—how is he to know? I don't think, your Honor, it was a waiver sufficient on a volunteered subject that allowed them then to open up the door to this sort of thing.

Now your Honor will also remember Mr. Clardy said he really didn't know what—I mean Mr. Tavenner—what Clardy had, except possibly every member of the Committee always has a purpose in mind always within the broad terms of the resolution. And somewhere in this picture I am asking this Court to consider that pertinency was not present in the answer in such a way as to be a waiver to allow a member of the Committee to introduce the inference as set forth in Count 7. Who are "they" and who are these "we" and "we communists" or something that belong to the communist conspiracy. On its face, your Honor, the question is pertinent because it deals with communism, but by the very words asked it also gives a basis for a witness to retire back, not from the subject of his answer, but from an incriminating fact that there was none in that answer. He had not waived as had Mrs. Rogers and as had Mr. Bart.

I respectfully suggest to the Court for that [116] reason——

The Court: Now just a minute. See if I understand you. The point you are making now is that because Mr. Clardy coupled with his inquiry, who

are these "we" people that you refer to, coupled that with the statement, is this a part of the communist program, or words to that effect, that that somehow or other made it objectionable but that if he had only just said who are these people "we" that you refer to, that would have been perfectly proper thing for him to have asked?

Mr. Barnett: I think so, your Honor, and I really think he would have gotten an answer because all the way through this witness' testimony he tried to do it.

Now I have another phase to my argument, your Honor.

The Court: All right. You agree, is that right? That's exactly what is charged in Count 8?

Mr. Barnett: Count 8.

The Court: And Count 9?

Mr. Barnett: But your Honor, these questions concerned in their context are all one. Seven and 8 are one. I called the attention of the—in cross-examination that the Committee had split one question even in its own exhibit 7. Seven and 8 are really the same question and 7, 8, 9 and 10 are all the same question. It looked like they were on a scent, they were in hot pursuit. [117]

The Court: There is no doubt about that, which they had a right to be of course.

Mr. Barnett: Yes.

The Court: That is what they came out here for.

Mr. Barnett: On that subject, your Honor, privilege came in but I would like also to point out at this time your Honor, because we are on the subject,

it is an offshoot of the subject we are discussing now. This witness was being examined, cross-examined by counsel, by all members of the Committee. He was at the end of a long arduous time on the stand and as the Court probably noticed from the hearing of the record, it had been a difficult proceeding. There had been efforts to ask him every kind of entrapment question and I intend to argue on the main argument and show the Court four or five times he had the claim of privilege to the same question and that I am prepared to show this Court other than that the Court has already recognized on the other count, why he could not answer.

Methods of this Court, as was said in *Marcello* case, could not emulate or allow anybody to emulate in this court. You wouldn't have allowed one question and perhaps on a repetition you would have stopped it.

The Court: I wouldn't have allowed for one moment the conduct that the witnesses were putting on for this Committee either, for one little [118] moment.

Mr. Barnett: I agree, your Honor, but here is one lay man before five powerful Congressmen and as we go through this transcript I think we can point out to your Honor that those exchanges came first from the Congressmen. Mr. Tavenner took very little part in this. Where he asked the questions and came in and took the answers and the privilege there were only one or two times where he asked the Chairman to direct the witness to answer. They didn't leave this job up to the lawyer.

Your Honor, there are four or five times they made the witness ask for his privilege. There is a runaway thing in this whole proceeding that makes a very unique case. In all the cases I have read this man was the first witness called after Barbara Hartle and somehow or other by the attitude of the Committee and the first answers he began to give there developed a very wrong feeling, and I regret some of the words used by the defendant, but as between the defendant and five Congressmen and sitting before a Committee like this, your Honor, I do not think, coming back to the last four questions, that there was the intent after this harassment, this entrapment, this badgering all the way through here, there was the intent not to answer. In fact, your Honor, the whole transcript shows, not exhibit 7 but the whole, the pamphlet 4, and the record shows many, many answers, 48, 58, something like that, out of 78, there were only 28 questions [119] he did not answer, and out of those 28, your Honor, I think there were probably some questions asked four times.

The Court: Well, the only extent to which I have any legitimate right to consider the matter is, you are now referring to as I see it, would be if by virtue of the manner of examination the witness somehow or other was confused or inveigled into avoiding improperly, inveigled into waiving or setting aside a privilege that he intended to claim. I think the Court could justly consider that, but other than that it is not my province to consider how Con-

gress is going to attend to its business, no matter how much I might disagree or you disagree.

Mr. Barnett: I appreciate that.

The Court: It would be no part of my province to be telling Congress how to attend to its business unless it attended to it in such a manner in a specific case before me that indicated they had mistreated a witness or led him into a situation where he was not given full recognition of his Constitutional rights, so I don't think if they had asked it a hundred times, unless I could say that the asking of it a hundred times so beat down the will of the witness that he then lost his will to resist and so on and so forth, which I am sure you wouldn't suggest occurred here.

Mr. Barnett: I am suggesting it, your Honor, and as I go through this transcript again, your Honor, pointing [120] out where this man was asked three, four and five times and directed three, four and five times, where even the Chairman lost track of the questions, where the reporter couldn't find it, where—it was really a rough going and the voices were loud and people were really given a rough time. And it is too difficult for a layman to stand up before a proceeding like that.

The Court: Well, Mr. Jackins wasn't without aid. He had Mr. Coughlan sitting there immediately at his elbow and the record shows that he frequently took advantage of the opportunity to confer with his counsel, so I don't think you can make too much of that point. The record that was played for me indicated that in my judgment that the Com-

mittee was courteous, was pleasant in every way until they were baited by continual refusal to answer. The record indicates that every time any witness, both in this case and the other cases, asked for the privilege of conferring with counsel it was readily granted in the most pleasant and courteous manner. So I don't think you can make too much of that point.

Mr. Barnett: I am not discussing that. I am discussing the fact, your Honor, that first Clardy and then Scherer, then Jackson and occasionally Mr. Velde would go after him on the same question and making him repeat, repeat three, repeat the privilege three and four times, and he unfortunately in one instance said, "Under other circumstances I would be [121] willing to answer that question. So they spent two and one-half pages of this record, maybe three pages, trying to determine under what other circumstances and coming back time and time again. It was a very unfortunate affair because what it did was anger the Congressmen and they suspected that even then there was another waiver.

The Court: Getting a little bit afield on the matter, I think. Perhaps I have discussed it more fully than I should. I want to make it plain as far as I am concerned my only concern here is that, was there a violation of Section 192 of Title 2 of the United States Code.

Mr. Barnett: Well, then, if the Court please, I will probably do what I should have done to begin with and that is relate the defendant's evidence as to count 1.

The Court: Maybe so. I think we should have a break, not for your benefit or mine, but for the staff here. We will take our recess at this time.

(Whereupon, at ten-thirty-five o'clock p.m., a recess was hand until ten-fifty o'clock p.m., at which time defendant, and respective counsel heretofore noted being present, the following proceedings were had, to wit:)

Mr. Barnett: I think the defendant would like to direct the Court's attention to Counts 1 and 2 and the Court wanted to hear from the defendant on 3. [122]

The Court: That is right, as to all phases, but I think the orderly way would be to consider pertinency and then privilege and then anything else you may want to speak about.

Mr. Barnett: So far as I am concerned on pertinency as to 1, 2 and 3, your Honor, I know that there would not be reasonable apprehension if there wasn't pertinency and so I will take the exhibits with the Court's permission and review them now on Count 1 which is, how was he employed since 1935.

The Court: Yes.

Mr. Barnett: First we'd like to object to the terminology since it includes every year after 1935 and just by its very inclusiveness and vagueness includes any of the years covered already by the Court on the rulings on Counts 4, 5 and 6. It is indefinite and if he answered in any one year he possibly could also have been deemed to waive his

right as to any years since. I don't know at what point he would have been held to stop. But that is the first objection, your Honor, and the second one is that in any event he can show reasonable apprehension.

First the exhibits starting with testimony of Barbara Hartle.

The Court: Just generally summarize it, Mr. Barnett. I mean you don't need to find the chapter and verse. If you say it is in the record I will accept your word for it. [123]

Mr. Barnett: It is.

The Court: Go ahead.

Mr. Barnett: She identifies Harvey Jackins as a youth leader in the University of Washington and Mr. Wildman mentioned by Mr. Tavenner in one of his questions in Exhibit 7, I believe your Honor, and in pamphlet 4 put in by the defendant as an exhibit, it is also mentioned. He says, "You have been identified in Executive Session by both Elizabeth Boggs Cohen and Leonard Basil Wildman as a youth leader at the University. This is your opportunity—," or something to that effect, "—to deny it or to say something." That appears in the record in the transcript.

The Court: Youth leader in communist activities, you mean?

Mr. Barnett: Yes, youth leader in communist activities very definitely identified by both of them. Now to show the relationship of that testimony to the years the Court will remember I offered the Court Exhibit A-13 which I now pass to the Court

asking the Court to note the lower right-hand corner which specifically sets forth the years from 1935, 1936, I think 1937 and those two or three years since.

The Court: Yes, it shows he was in school 1935, 1936 and 1937 in spring quarter.

Mr. Barnett: Yes, your Honor, and therefore that identifies him as being a communist leader at the University [124] in charge of youth activities I think Mr. Wildman stated. At any rate that is in his testimony before the Committee. In addition, your Honor, it appears clear from Mr. Tavenner's introductory question to Mr. Jackins on the stand as to the identification that had been made of him and that did he wish to deny or amplify. Now I think that, your Honor, starts the period after 1935 in the event the Court is not going to rule as asked for by the defendant, or the terminology since, but if we go ahead and look at some of the other exhibits on different years since that time, we come across one count which in addition also refers to one article, Exhibit 8, also refers to counts 2 and 3 because the year 1948 is mentioned. This Exhibit 8 consists of photostat of a Post-Intelligencer article Friday, January 16, 1948, in which there is a column headed "Electricians Drop Man From Union." Mentions Harvey Jackins as being expelled from two local unions for communist leanings, turned out of Local 46 of the International Brotherhood of Electrical Workers, expelled by the Executive Board because it was proved beyond doubt that he is a communist. He is mentioned again as being ousted as business agent of the Building Service Employees' Union,

also covered in count 5 which the Court has already ruled upon. But the Court will notice the context of the exhibit as to all of these counts, not just one, but 1, 2, 3 and 5. [125]

I'd like to pass this to the Court to show the basis for some apprehension. Further on the same matter, your Honor, of reasonable apprehension, I have Exhibit A-9, Saturday, April 5, 1941, being a photostat of the Seattle Post-Intelligencer with a large left-hand lead column entitled "Brown Urges Union to Act on Red Issue." This, your Honor, is 1941 and covers part of the period since 1935. If he was asked to answer that question it would have meant every year and in that column, your Honor, there is a long article carried over to page 2 for further continuance and just roughly, without reading it, it charges the communists are challenging the laws and policies of the International Association of Machinists to cause strife in the Aeronautical Mechanics Union, Harvey W. Brown, International Brotherhood of Aeronautical Mechanics, yesterday urged all the thousands of Seattle members of the Aeronautical Mechanics to attend mass meeting tomorrow when reports on the trial board investigation of communist charges against various members will be heard.

They appealed to the membership which was contained in the following signed statement issued by Brown challenging, restating the challenge by the communists to the laws of the union that the Committee investigating the charges against certain members will report their findings. The trial board

already has recommended that Harvey Jackins, Aeronautical Mechanics member, be expelled from the union and fined. The [126] action was taken after the board investigated charges that Jackins was engaging in communist activities.

And the same column contains a reprint signed, of a pamphlet signed by Morris Rapport which was passed out to Boeing workers at plant number 1, asking all comrades of the Boeing union to use every means possible favorable to the communist party program to be at a meeting and so forth.

I'd like to pass that to the Court.

The Court: I have heard it. I have it in mind.

Mr. Barnett: Here, your Honor, is one also from the Post-Intelligencer, Exhibit A-7, dated October 25, 1947, and covered by the term since and referring to the Building Service Employees' Union which is also mentioned and in context is related to Count number 5 already dismissed by your Honor. It is entitled "Banned Union Agent as Red," an article by Fred Niendorff and mentions Harvey Jackins as business agent for Local 6, and it also mentions Jess Fletcher, your Honor, and this is an Auburn School Board action flatly declining to negotiate with Harvey Jackins, business agent, for Local 6 when they ascertained he had been active in communist party activities.

Now Exhibit A-10 was the photostat of the Times covering November 26, 1947, your Honor, and has a lead column "5 Ousted from Posts in Union," referring to Local number 6, Building Service Employees' Union, in which Arthur Hare, the [127]

recently appointed trustee, suspended Harvey Jackins for—not suspended from membership in the union, but removed from their jobs. Jackins was suspended 1941 from the Boeing Aeronautical Mechanics Union, independent, in a cleanup of officers and members accused of communist activities.

The Court: Now Mr. Barnett, your point on this, as I understand it, is that if he had answered what his employment was during these, during this period, that would have opened the door to interrogation as to how his employment was terminated and what his connection with the union was and all that, is that your point?

Mr. Barnett: And if your Honor please, the link of evidence——

The Court: Do you want to give us what your view is? Let Mr. Harris interpolate his view on that.

Mr. Harris: If your Honor please, I have now found the argument of Mr. Barnett riding two horses at the same time. First of all, he argues as to 7, 8, 9 and 10, that the answer has to incriminate so that you can—then you can close the door that even though you open the door it doesn't allow you to go in any further. Now he argues here if he told where he was employed that would have opened the door, so I find I can't very well answer his argument until I——

The Court: I am—the same thought has been going through my mind, but if you concede that the impression we had, [128] or I had, at least, and you seem to join in it from your line of argument, if you

once start, once start answering in a given subject in a given field, that then it is too late to claim the privilege after that time no matter where that may lead you. That is your position on it, isn't it?

Mr. Harris: Yes, I think it is, your Honor.

The Court: As long as you stayed germane to the subject you have talked about.

Mr. Harris: Yes.

The Court: That has been my impression of the law. Now if that, if that is right, if that position is correct, then I think I have got to dismiss counts 1, 2 and 3.

Mr. Harris: Well, if your Honor please, on that basis as to 1, "Will you tell the Committee briefly what your employment record is?" Now, he might state that I have been—well, let's say I am an electrician, I have been an electrician, I have been a—

The Court: Yes.

Mr. Harris: —a mechanic out at Boeings, I have done possibly certain other types of jobs during that period of time, that I don't think necessarily says then, well when you held these jobs were you a member of the union, which then they can go on and say, if I was a member of the union then I am going to have to say, well, were you ever expelled from that union. If you were expelled then what was the reason for that [129] expulsion. I think the primary purpose of the question contained in Count 1 is an identifying question merely asking generally, and it states, "Please just state briefly what your employment record has been since 1935." That then,

how that would in any way mean that the Committee had in mind of going into all these other phases of the case——

The Court: The point of your comment is that Mr. Jackins could have answered that in a way that would not have opened up the, up any field that might involve self-incrimination, that is the substance of the point you make, isn't it?

Mr. Harris: I believe that is the question. Then let's say for instance—I do have a problem yet of being able to rectify the position that Mr. Barnett has taken. I feel this way, that if your Honor then dismisses Counts 1, 2 and 3, and if this case is then reviewed on 7, 8, 9 and 10 by a Circuit Court and they hold that our interpretation which is trying to be advanced here from both barrels by Mr. Barnett is wrong, then 1, 2 and 3 should not have been dismissed and we are in sort of a quandary as to an argument.

The Court: Whereas, if we leave them both in we are bound to be wrong one time or another.

Mr. Harris: That is right. (Laughter.)

Mr. Barnett: May I suggest, will the Court hear from me that this is a double-horned dilemma? He has his two [130] horns, I have mine, and it works in reverse, and if he concedes as he is arguing on four that there has been a waiver, he must necessarily checkmate himself on the first four. He is using the argument the first——

The Court: I don't think it necessarily follows because this first, this question in the first counts is not in the same category as Count 2 which pin-

points to a particular year and there is evidence in the record that in that particular year the defendant was involved in some sort of activity that might well have been basis for self-incrimination, whereas the first question in all likelihood was one of those general questions that you ask of a witness almost as a routine thing to give some idea of what sort of an individual this witness is.

The question is, "Will you tell the Committee, please, briefly, what your employment record has been since 1935?" Something generally of what his activities are, what line of work he has followed and so on. I would think that is what that question means. However, on Counts 2 and 3 I think they must go along with 3, 4 and 5.

Mr. Barnett: May I just——

The Court: Or 4, 5 and 6, I should say.

Mr. Barnett: May I suggest to the Court that if an ordinary person was asked what has been your employment record since 1935, it is perfectly reasonable for such a person to assume they want them to start giving their record. If you have [131] an employment blank that says state your employment record since 1935, you don't say you are an electrician. You start putting doyn '35, '36. '37. How are we to put ourselves back and say he should have said he was an electrician or business agent or something? I think, your Honor, the first reaction you had when you thought 1, 2 and 3 should be dismissed was based on that understanding, and I respectfully suggest that trying to read an interpretation into employment record into the mind of a wit-

ness six, seven, eight months ago and say he should have told what he was, I think that is just a little bit rough. He had a reasonable thought and a reasonable apprehension.

The Court: It seems to go with an uneducated witness, it is conceivable that that is so, but of course the record affirmatively shows that we are dealing with a Phi Beta Kappa man of presumably extraordinary education and intelligence. And I don't think that what you have said just follows. You have affirmatively proven here that we are dealing with a man of extraordinary intelligence and learning, at least we generally presume, we who are not Phi Beta Kappas, usually presume that those who are have extraordinary intellectual attainments.

Mr. Barnett: I think that there is an essence of penalty in being a Phi Beta Kappa and I still believe when a man is a Phi Beta, or an ordinary person, when someone says, [132] "What is your employment of record since 1935," if he had said I was an electrician, shipyard worker and so forth, that is not what they were after. And can I point out to the Court—

The Court: Then if they came after him on something more and pinpointed it to the point where it was obviously incriminating, then he could have claimed his privilege. I don't think—I think that the question in Count 1 was pertinent and I do not think an answer to it was privileged, but I do think that Counts 2 and 3, while I have some doubt about them, must go the way of Counts 4, 5 and 6.

Mr. Barnett: Well then, if the Court please, that brings us, if we can leave number 1, for the moment, to be covered on the subject of wilfulness.

The Court: As far as I am concerned 1 is in. I have heard all—I can't devote the whole day to it.

Mr. Barnett: I understand, your Honor. Now on 7, 8, 9 and 10, we are back again for just a little while, if the Court please, to this matter of a question which on its face as is who are the "we" involved in this activity. I respectfully ask the Court to notice that Count 7, to look at Exhibit 7 offered by the prosecution on page 7.

The Court: Yes, I am looking at it. I have it marked.

Mr. Barnett: The lower left-hand corner it [133] says, what is supposed to be count 7, "Mr. Clardy: What do you mean by 'we'? Is this something originated by the communist party as part of its program?"

Now the Court will notice Count 7 states, "Is this something originated by the communist party as part of its program?" Now the Court will notice as I brought out on cross-examination that that count in that double question leaves out the phrase, "What do you mean by 'we'?"

Now if the Court will turn the page to page 8 at the top down about five or six lines to Mr. Clardy again who states, "Who are the other people?"

The Court: I am following it. I am reading it so you don't need to read it.

Mr. Barnett: I see. I just want to point out to the Court that in the record played to the Court

there is no "we." The word is "they" and I don't know that I want to belabor the issue, but in the actual record itself it is "they." I want to suggest to the Court, and if necessary make a motion that these are duplicatous, that they are one and the same, that in going over the transcript or the record, that they had, they have separated two questions aimed at the same thing instead of just one.

The Court: Well I think that reading the context of the questions in Count 7 and Count 8 together it is quite apparent that after having asked the question in the first [134] form including both sentences, namely, "What do you mean by 'we'?" and "Is this something originated by the communist party as part of its program?" then when Mr. Jackins declined that, then Mr. Clardy said, "Who are the other people then when you used the word 'we'?" In other words, it is obvious to me he was then deleting that portion of reference to the communist party and putting the question without that objectionable clause.

Mr. Barnett: But that of course is not the wording of the count.

The Court: What?

Mr. Barnett: —the wording of the count.

The Court: It is the wording of the next count.

Mr. Barnett: That still leaves 7 as—

The Court: Oh, yes, it still leaves 7 in, but I am talking about the next count. The next count deletes that clause that you find objectionable.

Mr. Barnett: You mean number 8?

The Court: Yes.

Mr. Barnett: My point of objection, that is——

The Court: The final count on this, in this series, it deletes everything that conceivably could be objectionable by saying, "What is the name of the group?"

Mr. Barnett: Well now——

The Court: How are you going to develop [135] that?

Mr. Barnett: That is where we were a little while ago, your Honor, and I suggest to the Court that I wanted to use the tape of the transcript if the Court will follow me from page 19 on that. The Court will note the long answer by Mr. Jackins and then Mr. Clardy says, "I may ask you, who do you mean by 'we'? Is this something originated by the communist party as part of its program?" Then the privilege is claimed and then Mr. Clardy says, "There can be no possible incrimination here." And Mr. Velde interrupts Mr. Clardy and directs the audience not to make a demonstration. Then Mr. Clardy asked for a direction that Jackins answer. The reporter tries to find the question and finds it and reads it.

Now I want to go along here, your Honor. Mr. Clardy repeats the question again, same question, "Who are the other people then when you use the term, the word 'they'?" This time from the tape it's "they" instead of "we." And the privilege is claimed again on the same question, and then Mr. Clardy says, "Are those that you associate with the persons that have been identified in this proceeding as members of the communist party?" That is related to all these questions. They just picked out what they wanted and I am asking the Court to see

the connection towards possible waiver again. If he says no, how is he to know which of the people of the hundreds that might go for personal counseling or might be involved, might be associated, the definition of [136] the word "association." Who are the "we." It is exposing him then from an innocent description of the work into the sort of discussion which he was thinking he had to avoid on Count number 1, but let us go on, your Honor, because I want to go to the bottom of page 21 where——

The Court: Now just a minute. I want to call your attention, if you are going to take so hypercritical a view of it, you must note the fact that in the answer on page 20 Mr. Jackins didn't claim the amendment. The basis he claimed on there was considering the nature of the Committee which is no basis for a claim of privilege at all.

Mr. Barnett: I think, your Honor——

The Court: Now I wouldn't be inclined to take so critical a view of it but you are.

Mr. Barnett: Thank you. No, I am——

The Court: You are taking a very close and critical view of it and I want to call your attention to the claim of privilege at that point wasn't based on a basis that there is any privilege for it at all. You notice that on about ten, twelve lines up from the bottom of page 20 Mr. Jackins said, "Under the conditions of this hearing and considering the nature of the Committee I must decline to answer the question." Which wasn't the basis for a claim of privilege at all.

Mr. Barnett: Well, your Honor, in my own notes that is the same privilege asserted twice to the same question. He [137] asked that question twice.

The Court: It isn't stated, though, that that is the basis. He says he isn't going to answer because of the character of the Committee which isn't a basis for privilege at all, if I were going to take a hypercritical view of the language used, which I wouldn't do.

Mr. Barnett: Well, what I really want to do, your Honor, is get the Court over to the point of view that it was expressed by Mr. Doyle following this conversation in which Mr. Doyle on page 21 just a little bit below the halfway mark says that was a waiver of his privilege under the Fifth Amendment. Now your Honor, when a Committee member thinks you have waived it and you thought yourself you shouldn't answer it, I am not asking to be hypercritical, but when they tell you you haven't incriminated yourself and it is brought up three, four and five times, it is too hard on an ordinary mortal, whether he be a Phi Beta Kappa or not, after an hour of this type of five powerful Congressmen pounding at you, your Honor, and he gave up, he just gave up.

They brought in communism, who are the "we." Your Honor, it is too much, and I am asking the Court to look at it in terms of the Kleinman case at this particular point. There was no intention on his part not to answer a non-pertinent question, but the Committee itself by introducing in all the "we's" and you can't separate their innocence, they wanted

him to say [138] something about communism. They wanted him, your Honor, to waive his privilege and as far as Mr. Doyle was concerned, he gave a long statement, "You waived your privilege." Now he says, "What is the name of the group?" And that is the basis of number 9 count, Count number 9 follows in the same statement, "But what is the name of the group?" Now, your Honor, on its face it talks communism. Is a witness supposed to look behind, beyond reasonable apprehension? What is the basis for reasonable apprehension? It doesn't have to be reasonable. It has to be satisfactory to the Court, looked at in the context from all surrounding circumstances, and that is what this defendant is depending on this Court for, to look at all the surrounding circumstances, and if the Court looks at it that way, giving a free, frank, voluntary answer and says he asked for it, he volunteered it, then perhaps the Court will say, Well, he had a right then to get scared when they started thinking he had waived it and the Congressmen said he had waived the Fifth Amendment. So was he so wrong for an ordinary layman? And Mr. Doyle from California is a lawyer.

The Court: Well, the witness had Mr. Caughlin there to advise him and frequently did take his advice about it. I dare say Mr. Caughlin took as extreme a view of it in the other direction as Mr. Doyle might have taken in that direction, don't you?

Mr. Barnett: The advice was to claim his privilege [139] and he claimed it because of the question getting into communism. As a matter of fact,

supposing, your Honor, he had said, they had said, what is your occupation, what is your work when Clardy said that and Clardy said to him, look how this all started, Clardy said, "You belong to some profession of some sort. I am serious about this. I want to know what is it you do. Is this something you invented yourself?" Jackins said, "May I have a little latitude in explaining it, sir?" And Clardy said, "I haven't limited you."

The Court: And then he goes along and gives a long dissertation about this with great enthusiasm and volunteers a great deal of description about it and then afterwards refuses even to give the name of the group.

Mr. Barnett: My point is, your Honor, supposing he had said, "I refuse to answer that." Now your Honor, if he had refused to answer it and said it might incriminate him because of the nature of the work, he would have been up on contempt of that, but after he answered——

The Court: He had already waived, you have forgotten the fact he already waived on that at the very beginning of the hearing. If you refer yourself back to pages 4 and 5 of your transcript, you will find that he already waived on that.

Mr. Barnett: On his present occupation for work. [140]

The Court: Go back to page 4. You will find, "How are you now employed, Mr. Jackins?" "I am employed as a personal counsellor." "In what type of business?" "In the field of professional personal counselling." "How long have you been so em-

ployed?" "Three and one-half years." And so on. So he had fully opened up the subject of what he currently was doing at that time when he came back to this last question. If the Committee was interested in it, and if it was pertinent, why it was a subject they had the full right to inquire about and he had waived any privilege on it.

Mr. Barnett: Your Honor, we are discussing waiver here. I think, in a double-edged way and my theory of the law is and I think there is ample law for it and it is in my brief, the witness can stop short at such time as incriminating factors come in.

Now the mere fact he waives talking about employment does not mean, as Mr. Doyle suggested, he waives everything. If his answers up to that point have not furnished incriminating evidence, if Mrs. Rogers had not freely discussed all her communist activities, if Bart hadn't told about all his employment to people they would not have been held to waive their privilege. Now he——

The Court: Is there anything in the record—let's turn to another phase of it just for a moment. Is there anything in the record to indicate that this group was [141] in fact a subversive group nor any way engaged in any criminal activity?

Mr. Barnett: No, there is not a thing.

The Court: Then how could it have been incriminating?

Mr. Barnett: Your Honor——

The Court: How could it have been incriminating if there is no evidence that this group was engaged in any illegal activity either communism or

otherwise, how could it have been incriminating? He could have said, yes, the name of the outfit is Dianetics or whatever the name of it was, and the people connected with it are a group of so and so. How could that have been incriminating then?

Mr. Barnett: I have two points on that, your Honor. The first is the one I opened up with in asking the Court to give the defendant five minutes in chambers and the Court said he might listen to authority if I produce it showing it has been done, and if the Court will allow me time I will produce a case in which it has been done. But the second thing is this, your Honor, this identification of "we" among a large group of people opens up the possibility of unlimited definitions, of identifications, I mean, and the numbers of people that may have been involved in this counselling work, and puts him in a position where he may be furnishing evidence that could be used against him in perjury by saying nobody in there is a communist, or all these people are not communists, [142] and someone comes in and identifies one of them as being that way and your Honor, I will say to this court it is not in the record that is the situation. This man as himself a witness before the Velde Committee has found himself in a moral spot where he has people whose lives, families are involved. He doesn't want to involve them. Now I don't think it should be necessary to produce that evidence quite to that extent, but when they said, who are these "we" and that flashed through his mind, your Honor, what is he supposed to say? Well, will they produce, will they

produce another Chambers, will they produce somebody else, am I mistaken in my identification. I might respectfully ask the Court—I know time is the element—not for the purpose of reopening this whole argument, because I will rest on my brief if the Court would allow me to get that authority at such time as the Court—I think I can get it shortly and allow the defendant his five minutes, and he will use the exhibits now before the Court to prove what I am talking about.

The Court: You must keep in mind that we have, as I see it, three general matters to consider here. First, we have the matter of determining the issue as a matter of law. Secondly, we have the matter of determining the issue as a matter of fact, and then finally, we have the matter of circumstances that might well be addressed to the Court in extenuation and to be considered when imposing sentence. You see [143] those are the three different phases of the case that I have got to keep in mind. Now I am—I am first trying to give attention to the matter of law and I have dismissed some counts because I believe that as a matter of law they should be dismissed. Secondly, I give the thought if there be any fact issues, and then finally, if there be a conviction I will give full weight to some of the things you have said in imposing sentence which I recognize have a lot of merit for that purpose. But I question whether they have any merit on the matter of whether or not there has been a violation. I am trying to keep my tri-capacity in mind here as I hear you. Perhaps I should have a different hat for each phase of it, but you recognize that I do have those

three phases of the matter to consider. After having fully considered the matter much more than just the time we have spent here this morning as I am sure you must understand from my familiarity with the authorities, the fact I have been through this subject very extensively before, I am inclined now to also dismiss Count 7 because it is a compound question, conceivably might be objectionable. I am in doubt about it, but in a case of this type I think all doubts should be resolved in favor of the defendant and I am in doubt about it. Accordingly I think as a matter of law I will dismiss Count 7, leaving now Count 1, Counts 8, 9 and 10 in the case and to be considered under the evidence and the rules applicable, namely, with due regard [144] to the presumption of innocence, the burden of proof beyond a reasonable doubt and all of the other factors that a trier of fact in a criminal case must keep in mind.

Do you wish to be heard any further?

Mr. Harris: Just because of Mr. Barnett's urgency of this particular case your Honor, I have brought the Rogers case down and I am going to not argue with your Honor's dismissal of 7, but in view of that I would ask that your Honor reconsider your position as to Count 2, and I am reading, just like to make one or two references to the Rogers case which is in 340 U.S. page 367, and I am going to read just briefly from 372.

“But petitioner's——”

that is Rogers',

“——conviction stands on an entirely different footing——”

referring back to the Blau cases cited first in this opinion, in this volume,

“——for she freely described her membership and activities and office in the party. Since the privilege against self-incrimination presupposes a real danger of legal detriment arising from the disclosure, petitioner cannot invoke the privilege where response to the specific question in issue here [145] would not further incriminate her.”

“Would not further incriminate her.” They say here she had already described her membership, activities and office in the party. “Disclosure of a fact waives the privilege as to details.”

Now apparently that is what Mr. Doyle is saying and which I argued to your Honor before from that statement. Now counsel argues that because there was no incrimination by this long answer as to his group, therefore there was no waiver as to the other point, and he might be arguing right in reading some of this language. The Court says the following, states the rule.

“ ‘Thus, if the witness himself elects to waive his privilege as he may doubtless do, since the privilege is for his protection and not for that of other parties, and discloses his criminal connections, he is not permitted to stop but must go on and make a full disclosure.’ ”

“Following this rule Federal Courts have uniformly held that, where incriminating facts have been voluntarily revealed, the privilege cannot be invoked to avoid disclosure of the details.”

They cite authority for that. [146]

“ ‘Where a witness then——’ ”

Down further they refer to a Michigan Court case where a witness has voluntarily answered as to materially incriminating facts and it is held with uniformity he cannot then stop short and refuse further to explain, but must disclose fully what he has attempted to relate.

Now the Court states here that:

“As to each question to which a claim of privilege is directed, the Court must determine whether the answer to that particular question would subject the witness to a ‘real danger’ of further incrimination.”

And I emphasize the word “incrimination” there. And then they say:

“After petitioner’s admission that she held the office of Treasurer of the Communist Party of Denver, disclosure of acquaintances with her successor presents no more than a mere imaginary possibility of increasing the danger of prosecution.”

I ask for that reason, your Honor has stricken and dismissed Count 7 because the answer to that question is it might incriminate him?

The Court: Yes, that is the theory on which I strike. [147]

Mr. Harris: Now, going back to Count 2, "How were you employed in 1948?" The answer to that question even considering all the documents in evidence could not possibly incriminate without going on to further questions and for that reason I think it would be much more advantageous to get a clarification on that point. In other words, does the mere answering of that question then, not incriminating in itself, open the door to other question which may be incriminating? I think you can read the Rogers case and say no, it doesn't.

The Court: Well, the reason that I included—now maybe I was in error in my understanding of the fact. The reason I included the striking or the dismissal of Count 2 was on the theory that somewhere in the evidence here there was some indication that the defendant in that year was employed by the communist party in some activity or other. Am I in error on that?

Mr. Harris: My recollection is not the same. If—Mr. Barnett what is your recollection on that as to—

Mr. Barnett: My recollection, your Honor, in all the testimony in Barbara Hartle's testimony and other testimony it so relates the defendant to activities particularly in 1948.

The Court: Activities is not enough. Activities is not enough in my judgment. In my judgment it means employment. [148] Now I don't think that everybody that is a communist is necessarily em-

ployed by the communist party and accordingly doesn't include employment. We have this same situation up in one of the Portland cases where the same identical situation arose, and there was some evidence that the defendant in that case during the year in question was employed. I mean was a secretary or a chairman of the finance committee or some other thing which I in that case held was within the term employment.

Now I was assuming from what you had said that somehow or other it appeared that Mr. Jackins was or was alleged to have been an employee of the party during that year. Now if that is not the case, then my action on Count 2 is mistaken and I will rescind it.

Mr. Barnett: Well, we have evidence, your Honor, of his employment. Here is 19—what year are you referring to?

Mr. Harris: Just 1948.

The Court: 1948.

Mr. Barnett: Here is Exhibit A-8, January 16, 1948, showing he was expelled by executive board from a job because of communist activity.

The Court: Because of communist leanings or activities or towards that effect, but nothing showing he was in fact an officer or official or an employee of the party [149] in that year.

Mr. Barnett: He was ousted as business agent of the local of the Building Service Employees' Union and——

The Court: For what though? Don't stop there. The rest of it is what we want to hear, for com-

munist leanings or communist activities, something of that kind. That is different than employment.

Mr. Barnett: When it says a man is expelled and then he—on his job for communist activities—

The Court: That doesn't necessarily mean he is employed by the communist party, does it?

Mr. Barnett: No, I mean it might be so far as he is concerned, your Honor. I think we are asking here now for a burden of proof beyond, way beyond what was ever intended to come out of a man's mouth to furnish a link or chain or a scent. Here your Honor is putting us on burden of proof to prove something here. Here is party membership. Here is the Smith Act. Here is yes or no on activities through that year and that Committee knew exactly what it was after. Mr. Tavenner said, "It had been my intention, Mr. Chairman, to ask this witness concerning his communist activities in different unions and he has refused to answer my question, even says it was the first one." That is in Mr. Tavenner's testimony.

The Court: That came after this question [150] though.

Mr. Barnett: I know, but it goes back to the very first question he asked, your Honor. I don't know what more is needed to put a witness on guard on these matters. This is too great a burden.

The Court: My action when I undertook to dismiss Count 2 previously I was under the impression that you had indicated that there was some evidence in the cause from which the inference could be drawn that the defendant was employed by the com-

munist party during that year and that was the reason that I acted as I did, but it now appears that I was mistaken that there isn't any evidence to that effect. Most of the evidence is that he had some, one could infer from the newspaper article, and incidentally, I am going a long ways to take my proof of facts from newspaper articles, but I want to again render, take every reasonable doubt in favor of the defendant and for that reason I am accepting these articles at full face value for this purpose. It doesn't appear to me now that Count 2 should be dismissed because there is nothing to indicate that answering what his employment was in that year would have shown him, led to employment by the communist party.

Gentlemen, is there anything further now?

Mr. Harris: No, your Honor. [151]

ORAL OPINION

The Court: The questions presented by this case are as grave and deep as any questions that our generation are faced with. In a certain sense, of course, every criminal case is an important case, no matter how trivial the charge may be because to the defendant it is important if not to anyone else, but as criminal cases go, this case is a minor one, only a misdemeanor is charged. The maximum penalty authorized by law is relatively small in this court at least where we are frequently dealing with cases involving maximum penalties ranging up into many years, even to life imprisonment and death sentence, so that relatively speaking, this is an unimportant

case in that sense, but the questions that it presents are extremely grave because it involves on the one hand the undoubted power and authority, in fact imperative duty of the Congress of the United States to explore the threat of the communist conspiracy and to take appropriate action to prevent that conspiracy from reaching its avowed objectives. Nothing can mean more to our age and time and the welfare of our country than that Congress do discharge that duty thoroughly and extensively and effectively so as to protect us from the threat of the communist conspiracy and all of the horrors and beastiality that goes with it.

On the other hand of equal importance is the [152] necessity of maintaining the full vigor of the rights, privileges and immunities granted to the individual citizen by the Constitution of the United States of America. It may well be that if we deny to our citizens those Constitutional privileges and rights the conspiracy to that extent will have succeeded in having destroyed a part at least of what we hold dear in our Constitution.

We have the problem here of balancing on the one hand the important considerations involved in the right and power of Congress to investigate, to inform itself on a matter of this importance so that it may take appropriate action for the protection and benefit of the people, and on the other hand, we have the necessity of safeguarding the rights, not of this individual defendant only as an individual, important as he is, but for the protection of all of our people, citizens or otherwise.

The questions presented in this specific case both

of law and of fact are very difficult of solution. Minds far better than those of the present speaker have been wrestling with these problems and they haven't come up with any ultimate final solution to them. All I can do, of course, in my humble way is to follow what the higher authority has said these laws mean, what the Constitution means, and where they haven't spoken on it, to use my best judgment of what they will ultimately say when they get [153] around to speak on it. And that is what I have got to do here.

I am mindful of the fact that in this case I have a double responsibility in the first place in deciding the issue of guilt or innocence in considering both the law and the facts of the case. I am satisfied now that all of the questions in the indictment were pertinent, or perhaps I should say the answers to the questions would have been pertinent to be literally and strictly correct. The answers to those questions well may have been pertinent to the matters under inquiry by this Congressional Committee, so I have no difficulty at all in finding pertinency as to all of the questions, all ten of the questions.

The problem arises when we must consider whether some of the questions involved matters as to which the defendant rightfully might claim the privilege against self-incrimination. Incidentally, it would appear that the only privilege claimed by Mr. Jackins was that of self-incrimination. In some of the other cases other witnesses have claimed privilege under the First Amendment and the Fourth Amendment and various other provisions of

the Constitution, but here Mr. Jackins has only claimed the single privilege against self-incrimination which is guaranteed by the Fifth Amendment to the Constitution.

I think under the evidence that has been submitted [154] here that the questions contained in Counts 3, 4, 5, 6 and 7 might reasonably have been considered by Mr. Jackins to have involved self-incrimination. While I have some doubt about it, I am resolving those doubts in his favor and as a matter of law I dismiss the counts that have just been referred to, namely, 3, 4, 5, 6 and 7. I hold that as to Counts 1, 2, 7, 8 and 9 they were——

Mr. Harris: Just a moment, your Honor.

The Court: Have I misspoke myself?

Mr. Barnett: You mentioned 7.

The Court: 8, 9 and 10, excuse me; 8, 9 and 10, that the claim of privilege was not properly invoked, that true answers to those questions did not reasonably involve any threat of self-incrimination, and that Mr. Jackins was required under existing law to have answered them.

So much for the law rulings. I am not clear in my own mind whether there is any other, any fact issue presented beyond that. It is perfectly plain from the transcript of the testimony which has been introduced, the testimony of Mr. Tavenner, that Mr. Jackins intentionally, deliberately and with specific intent not to answer, did refuse to answer those questions as I have interpreted the law and understand it to be in this instance. All that is required in order to constitute that particular element of the

offense is that the witness deliberately and intentionally [155] refused to answer as distinguished from failing to answer by reason of misunderstanding or inadvertence or mistake, or something of that kind. There is no room for any thought that Mr. Jackins didn't understand the question or that he misunderstood the fact that it was specifically directed to him.

The evidence shows that Mr. Jackins is a man of education and intelligence and I see no reason for supposing that he misunderstood. Accordingly that element of the case is clearly shown, namely the wilfulness of it in the sense of intentional and deliberate refusal to answer. It would seem to me that that is all that is required to constitute the offense. The law provides, Title 2, Section 192, provides specifically that any person properly summoned before a Congressional Committee who refuses to answer any question, and I underscore the word "any"—in other words, apparently that statute specifically makes it a criminal offense to refuse to answer any specific question in such a proceeding.

Here we have four such questions, the answer which was refused. On the last three questions, namely those in Counts 8, 9 and 10, if it could have been thought that there was anything privileged about those questions to begin with and counsel very frankly conceded that there was not, not in any of the evidence before me at least and that is what I have got to go on. I can't go on anything

other than what the evidence is. There is no indication at all that naming [156] this group or indicating in general who they were or whether they had an office with the defendant at the same place where his office was, that in any manner whatever answering that would have been incriminating in any case. But even supposing that it was incriminating, it is very clear in my mind that at the very beginning of the hearing, first few questions that were asked, Mr. Jackins did answer concerning his then occupation, and if there was any privilege about it, it was waived by his answer.

I am satisfied the law is that once a witness without objection and without claiming privilege enters into a discussion of a specific subject, that he may not thereafter claim privilege when he gets to the details of the matter. That is exactly what the situation presented here is.

Accordingly I find and hold that the defendant has been proven guilty beyond a reasonable doubt of the offenses stated in Counts 1, 2, 8, 9 and 10, and I find him guilty accordingly. Sentence will be imposed on Friday morning, March 25th. At that time findings, appropriate papers can be presented.

And I should say to you, Mr. Barnett, that what I have said here is not to be construed as meaning that I close my mind to a great deal of what you have said in the matter of imposing sentence. I think a great deal of weight should be given to the circumstances that you alluded to, but in [157] my honest judgment they do not afford a defense to the charge made, and accordingly when it comes to

the matter of imposition of sentence I will fully consider many of the circumstances that you suggested as a defense to the action. I think you have in mind what I mean.

Mr. Barnett: Yes, I have.

The Court: I think that unless the United States Attorney makes objection, that it would be appropriate that Mr. Jackins remain at liberty until sentence is imposed.

Mr. Harris: No objection.

The Court: No objection. Very well, Mr. Jackins I am sure you understand that you are obligated to be here when directed to be here for the imposition of sentence and available to the Court, do you not?

The Defendant: I do, your Honor.

The Court: And not to leave the jurisdiction and so on, so I will permit you to remain at liberty on your present bail, that bail that has previously been furnished and for that purpose.

The Defendant: Yes, your Honor.

The Court: Very well.

Mr. Barnett: Your Honor, in the beginning of the case I asked for special findings and——

The Court: Yes, I recall that you did and I would suppose that you may have the interval between now and the [158] time of imposition of sentence to prepare them, but if you choose to proceed otherwise I will be glad to consider them at an earlier time.

Mr. Harris: I asked Mr. Barnett now in view of the record as it now stands whether he still desired special findings rather than general findings and he

indicated he did, so in view of that I think probably I am going to prepare some and it may be that he wishes to prepare some likewise if he still makes request for special findings.

Mr. Barnett: Supposing, your Honor, I am allowed twenty-four hours to make a decision on that and I will communicate to Mr. Harris.

The Court: Yes, well very well. What we will do, we will continue the case, final disposition of the case for a further period of twenty-four hours. Let's do it that way. Let's continue the case for further consideration and keep it open until next Monday. In the meantime you can decide what you wish to do. If you wish to present your written specific findings, both of you on the morning of the 25th when I am back here for the imposition of sentence, I will be glad to consider it at that time. If you wish some decision about it sooner we will see what can be done about attending to it sooner.

Mr. Barnett: All right.

The Court: Is that satisfactory? [159]

Mr. Harris: Fine.

Mr. Barnett: Satisfactory.

The Court: I want to express my appreciation to counsel for the very fine manner in which the case was presented. It conforms to the highest traditions of our profession and I appreciate your kindness, the kindness and courtesy of both of you. The questions presented in this case are grave and serious questions and——

Mr. Barnett: I'd like to respond to that, your Honor, and state that for me and I am sure for the

defendant, we feel we have had a fair trial.

The Court: I tried to make it so.

Mr. Barnett: And counsel for the prosecution has been very accommodating.

The Court: Thank you, Mr. Barnett.

Mr. Harris: A bouquet to Mr. Barnett, too.

The Court: Recess now until one-thirty for the trial of the Gas Screw "Josey" case.

(Whereupon, Court was recessed at twelve o'clock noon.) [160]

March 25, 1955

The Court: The Court has been furnished with a pre-sentence report in this case, Mr. Barnett, and I have examined and have it fully in mind, and I am ready to proceed with the imposition of sentence.

Are you ready, and is Mr. Jackins ready?

Mr. Barnett: We are, and I might say to the Court there were filed motions for new trial, and the Court wanted to consider them at the same time.

The Court: Yes, I would.

I wouldn't want to consider it at any great length.

Mr. Barnett: I don't have that in mind.

The Court: Yes.

Mr. Barnett: It is based on the statutory grounds and pretty largely concerns the matter already known to the Court.

The Court: That we have covered pretty thoroughly before?

Mr. Barnett: Yes; and the only comments I have to make on it probably would be all similar to what I would make in connection with the statement re-

garding the sentence of the Court, so that I will cover them both at the same time.

The Court: Yes.

Mr. Barnett: First, I feel that the error in denying [2*] defendant's motion for acquittal, made at the conclusion of the evidence, was one both in law and in fact, and that ample ground was shown to sustain the privilege claimed as to all of the counts together, without saying as to the Counts VIII, IX and X.

It was, in effect, a denial of due process and fair trial because of the hearing before the Committee. It was, in all respects, really a trial. He was harassed and the Court is familiar with the evidence we put in the record. Grounds numbers two and three are to the same effect—judgment was contrary to the weight of the evidence—that the evidence was ample to show that there was sufficient danger to this witness before the Committee to justify his claim of privilege; and, further, that it was an error in law and in fact in holding that the last three counts were, in fact and in law—and the evidence disclosed by his evidence was that they were not—pertinent.

Now, passing from the argument on the motion, your Honor, to a statement in connection with the sentence:

I didn't state to the Court at the time, but I state now, that my own work is largely civil and I was asked to become interested in this case by an officer of the Bar Association.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

There had been difficulty in getting enough interest shown by members of the Bar, and the selectivity was limited and the [3] defendant before the Court went to the Bar and asked for references to attorneys who might take an interest in this case.

As I have gone through it, your Honor, I have noticed that it stands not really in crime, or in criminal law; it stands really on the political and Constitutional question.

The usual intent that one looks for in crime is not present in a situation like this.

The word "intent," as the Court referred to during the course of the hearing, is perhaps the wrong kind of a word to use; but, nevertheless, it is a criminal statute, and I realize the Court has to look at it that way, but I asked the Court to look behind the record to see the picture that faces a layman before five powerful Congressmen digging at him the way these men did, and I suggest to the Court in the course of 58 answers, there was ample evidence of willingness to cooperate up through the point where a witness, under the Constitution, has the right to invoke the protection on matters that he fears, and there is nothing un-American or unconstitutional about using the Constitution of the United States, and I think the Court made that clear in his own remarks at the conclusion of the case, and in that sense, your Honor, I think, keeping in mind the [4] absence of intent, that is usually needed in a case like this, and the great showing of cooperation up to a point, that it ought to have a bearing as the Court considers what to do about this

defendant; and, too, your Honor, I brought out during the evidence the fact that some aspects of at least the last three counts are all associated one with the other.

The address, and the name of the group, sort of insignificant matters, that Chief Judge Magruder, of the Second Circuit has referred to in a somewhat similar case as being——

The Court (Interposing): Excuse me.

(Whereupon, there was a brief pause.)

The Court: Excuse me, Mr. Barnett.

Mr. Barnett: These last three questions I was referring to, your Honor, about name and address and things like that, the idea that crime can be based on matters like that, where there have been 58 answers, looks terribly serious to me on a matter that stands on a political and Constitutional question. It is something like a phrase that Chief Judge Magruder used, like the tail wagging the dog. The seriousness of appearing before a Committee like this, legitimately after facts upon which to base legislation, is worrying the entire country now. Congress is trying to change its rules [5] and regulations, and, in that respect, and by way of conclusion, because I know the Court has in mind all the facts, it seems to me there is no place for the average citizen to go to restrain Congress except to go to the Constitutional restraints themselves, and, in this particular area, when Congress moves in, as it did, and as I stated in my brief, to subpoena six District Court Judges making decisions the way

they are making them, they are independent—can say they are independent of the Government.

When Mr. Truman is subpoenaed, he could say he was part of the executive branch and independent; and when Mr. Eisenhower was called in, Mr. Brownell wrote a classic opinion showing separation of Government. But, the average citizen has only the Constitutional provisions for restraint, and this is the last bulwark against running away tactics of a Congressional Committee and I am asking the Court to remember that a couple of times during the trial, the Court said, as a matter of law, and fact, you could not agree with me, but you would keep in mind extenuating circumstances at the time of sentence.

I think, your Honor, that is all I have to say.

The Court: The motion for new trial will be denied. I have fully given thought to the points raised by the [6] motion previously, and can only say of the situation what long ago was said, that the Court may be in error, but not in doubt.

I feel that under the existing state of the law, that there isn't any merit in the motion, and, accordingly, I have denied it.

I want to express to you, Mr. Barnett, my appreciation and respect for the thorough, vigorous, and yet courteous and dignified manner in which the defense has been presented here in a case in which tendencies are to do quite otherwise.

Your actions in the matter, in accepting the case and in defending it, are a tribute to you, and an

honor to the profession of which you are a member, and I compliment you on it.

In the matter of sentencing in this case, and in all of these several cases that I have now tried in this field, it has given me concern far beyond the intrinsic merits of the individual case.

The case is one for a relatively minor offense as criminal cases go, and, yet, the issues raised in it are grave and serious. Any thinking, conscientious citizen must realize that we are faced in this case, and in companion cases, with as difficult and troublesome questions as can be put to those charged with the conduct [7] of public affairs, and in the administration of justice.

An odd circumstance is that all through history sometimes seemingly inconsequential cases have presented some of the greatest and most important issues before the people of the time. It might well be that this kind of a case is another in that long line.

Imposition of criminal sentences is far and away the most difficult part of the Judge's duties, at least for this particular Judge. A Judge must constantly keep in mind that, as far as humanly possible, he cannot interpose his personal idiosyncracies and views, but must, as much as one can, apply the law with understanding, mercy, and yet firmness as one is obliged to do.

In considering the case, that point of view, I first come to the question of what is the offense involved. The offense involved under title II, Section 192, is the wilful refusal to answer questions. I have

found, and I think correctly so, that the defendant was guilty of that offense in several particulars. So, I have no doubt of his guilt under the law.

Then, in the matter of applying the appropriate sentence to that, it seems to me that I must consider how that came about, how did it come about that he wilfully refused to answer?

If it was because of his genuine concern for his [8] self-incrimination, if the witness appeared before the Committee and courteously, although vigorously, presented his claim of privilege, his views, and genuinely sought to afford as much information as he legitimately could, without incriminating himself, even though he was mistaken about it—namely, even though the advice of his counsel was incorrect, or his own judgment about it was incorrect—that is one kind of thing.

After thinking a great deal about it, I am fully convinced that that is the situation with Mr. Jackins, that he came before that committee, and thought of affording as much information and answering as many questions as he properly could without incriminating himself or putting himself in the position where he might be incriminating. I do not think that he came to the committee with a preconceived notion of contempt for it or contempt for the Government, or Congress.

Now, the reason I say that is that information given to me is that for at least the last five years Mr. Jackins has had no connection whatever with any subversive activity of any kind, he has led a law-abiding, worthwhile life in this community, and

there is not any evidence whatsoever that he has deviated from entirely [9] proper conduct in every way during that period of time.

Of course, I can't sentence here, on account of anybody's opinions, no matter how violently I might differ with them, but I think I have the right to consider these factors in determining what the degree of punishment, if any, should be.

I may be mistaken about it, but on the basis of the information I have, I think that Mr. Jackins came before the Committee, determined to answer as fully as he could without incriminating himself. That he had a right to do, under the Constitution. If the United States Constitution's guarantee against incrimination were applicable to only those who had no fear, it would be a hollow privilege, indeed. So, while I think Mr. Jackins was mistaken about it, and that he could have and should have answered those questions, I think he acted within his Constitutional right. I could easily get myself off here by pointing out how helpful it would be to the Government in a fight against the Communist Conspiracy if persons who knew much about it came forward. They will not find out much about the Communist Conspiracy from me, because I don't know about it, firsthand; but, those we have got to find out from, are those who have some connection with it. So that, I am not one of those who puts in [10] with castigating Committees of Congress for calling those before them. In my judgment, that is perfectly ridiculous. If you are going to call persons who don't know anything about it be-

fore the Committee, there is no point in having the hearing at all. You have got to call people who have some acquaintance with it, and, of course, if they have been members and active in the Conspiracy, they would make all the better witnesses, of course.

So, I personally do not go along with the criticism of the Congressional Committee in calling Communists and former Communists before the Committee to inquire what they should know about the Conspiracy. They should make the best witnesses. It is regrettable that under the circumstances, sometimes that involves incrimination and that prevents, sometimes, getting the information that would be very helpful, but that is the unfortunate thing, one of the very few unfortunate things about having a Constitution that guarantees us against self-incrimination.

Would you care to make any statement yourself, Mr. Jackins, now, before I impose sentence?

The Defendant: No, your Honor.

Mr. Harris: If your Honor please, just on a procedural matter.

The Court: Yes? [11]

Mr. Harris: I believe, at the conclusion of the trial, the case was continued because at that time Mr. Barnett requested special findings, and he was going to advise your Honor subsequently as to that matter.

I would like to have presented to the Court at this time, a general finding which we have all agreed to.

Mr. Barnett: That is right, your Honor.

Mr. Harris: And, as far as the record is concerned, may it be deemed to have been entered prior to the motion by Mr. Barnett for a new trial, and prior to your Honor's comments?

Mr. Barnett: That is so stipulated.

The Court: Very well; the findings have been signed and may be entered.

It is the judgment and sentence of the Court that the Defendant, Carl Harvey Jackins, upon his conviction thereof, is adjudged guilty of the offense stated in Counts I, II, VIII, IX and X, of the Indictment, and is convicted thereof, and, accordingly, committed to the custody of the Attorney General of the United States, or his duly authorized representative, for a period of six months, and fined in the sum of \$250.00 on each count, the sentence to be concurrent, however, or, in [12] other words, only a total of those amounts, and the execution of the imprisonment portion of the sentence will be suspended on Mr. Jackins' being placed on probation according to the usual terms of probation for a period of two years.

The usual terms of probation, Mr. Jackins, are that you make reports in such manner as the Parole Officer will indicate to you, and that you will avoid any criminal activity, or activity subversive to the good interest of our Nation, and, in general, continue to live a good life that you have been living, apparently, during the recent years.

That will be the judgment of the Court, and the

fine may be paid in whatever reasonable time you wish for that purpose.

Would you like any special time, or not?

Mr. Barnett: Your Honor, I have notice of appeal ready, just as a formal matter, and would the Court care to set bond on that at this time?

Mr. Harris: I think probably the first question, Mr. Barnett, and then we can dispose of that, is: Is there any time requested for the payment of the fine?

The Court: Is any time requested for the payment of the fine?

Mr. Barnett: Well, it will be suspended, won't it, [13] at the time I file notice?

The Court: Yes, it will.

All right, then, I won't provide any special time. It will be the standard payment, then. I would have been glad to have given you some time on the payment of it if you wished it, but if you don't wish it, then I am not concerned with it.

Mr. Barnett: I think we are going to file notice of appeal, and that suspends it.

The Court: That does suspend it, yes.

I think the Bond on appeal can be continued in the same amount previously provided.

Mr. Barnett: All right.

Mr. Harris: There will have to be a new bond, however.

The Court: Oh, yes, of course.

Very well.

Mr. Barnett: I will file that in the next few minutes.

The Court: Very well.

The Defendant: Thank you, your Honor.

(Whereupon, hearing in the within-entitled and numbered cause was adjourned.) [14]

Reporter's Certificate

I, Earl V. Halvorsen, official court reporter for the United States District Court, Western District of Washington, Northern Division, hereby certify that the foregoing is a full, true and correct transcript of matters therein set forth; and I do further certify that the foregoing has been transcribed by me or under my direction.

/s/ EARL V. HALVORSON.

[Endorsed]: Filed April 27, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT COURT, TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 39(b)(1) of the Federal Rules of

Criminal Procedure, and designation of counsel, I am transmitting the following original papers in the file dealing with the action, together with exhibits, as the record on appeal herein from the Judgment, Sentence and Order of Probation filed March 25, 1955, to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers being identified as follows:

1. Indictment, filed Sept. 15, 1954.
2. Appearance Bond, deft., \$1,000.00, cash, filed 9-16-54.
3. Marshal's Return on Bench Warrant, filed Sept. 17, 1954.
- 3-A. Motion to Dismiss Indictment, filed Oct. 4, 1954.
- 3-B. Order Denying Motion to Dismiss Indictment, filed 10-4-54.
4. Waiver of Jury Trial by Defendant, filed 3-7-55.
8. Motion for New Trial, filed 3-25-55.
9. General Finding, filed 3-25-55, as to guilt of defendant on Counts I, II, VIII, IX and X of Indictment.
10. Judgment, Sentence and Order of Probation, filed 3-25-55.
11. Notice of Appeal, filed 3-25-55.
12. Bail Bond on Appeal (\$1,000.00) (cash deposited under original appearance bond), filed 3-25-55.
13. Order Authorizing Transmittal of Exhibits, filed 4-22-55.
14. Designation of Record for Appeal, filed 4-27-55.

15. Court Reporter's Transcripts of proceedings, filed April 27, 1955 (in 2 volumes).

Plaintiff Exhibits Numbered 1 to 7, inclusive, and Defendant Exhibits numbered A-1 to A-14 and A-14-A, inclusive.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 27th day of April, 1955.

MILLARD P. THOMAS,
Clerk;

By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 14748. United States Court of Appeals for the Ninth Circuit. Carl Harvey Jackins, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed April 28, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14748

CARL HARVEY JACKINS,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS

Appellant was indicted in the District Court for the Western District of Washington, Northern Division, for refusal to answer ten questions propounded by the Un-American Activities Committee of the House of Representatives, each of which was made a special count in the indictment. After trial before the court and without a jury, counts III, IV, V, VI and VII were dismissed and the court entered judgment of conviction upon counts I, II, VIII, IX and X. With respect to the counts upon which judgment was entered, appellant submits the following statement of points on which he intends to rely on appeal:

1. The District Court erred in refusing to dismiss counts I, II, VIII, IX and X of the indictment.

2. The District Court erred in holding that appellant did not properly invoke his privilege against self-incrimination under the Fifth Amendment to

the Constitution of the United States in refusing to answer the questions on which counts I, II, VIII, IX and X are based.

3. The District Court erred in ruling that the appellant had violated 2 U.S.C. section 192 by wilfully refusing to answer the questions constituting the basis for counts VIII, IX and X of the indictment.

4. The District Court erred in ruling that appellant had waived his constitutional privilege against self-incrimination with respect to the questions on which counts VIII, IX and X of the indictment were based.

5. The District Court erred in holding that due process of law was afforded appellant in his appearance before the Congressional Committee.

6. The District Court erred in ruling that the appellant might have answered questions on which counts I, II, VIII, IX and X of the indictment were based without waiver of his constitutional privileges against self-incrimination.

7. The District Court erred, after dismissing count III, in ruling that counts I and II were not in context a part of the same question and in refusing likewise to dismiss counts I and II.

8. The District Court erred, after dismissing count VII, in ruling that the questions on which counts VIII, IX and X were based, were not a part of the context of questions on which count VII was based, and in refusing likewise to dismiss counts VIII, IX and X.

9. The District Court erred, with respect to

count I, in ruling that the question did not call for incriminating information which might form a "link in the chain of evidence."

Dated at Seattle, Washington, this 27th day of April, 1955.

/s/ ARTHUR G. BARNETT,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 27, 1955.

